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MONTANA LEGISLATIVE HISTORY

Chapter 417 1995

Bill H _____ S 210 Original bill & history ✓ C

H. Committee on FISH & GAME			S. Committee on FISH & GAME		
Hearing Date(s)	2/28	C	Hearing Date(s)	1/31	C
ex	3/9	C	ex	2/07	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Multiple fiscal notes

3/29	3RD READING CONCURRED	92	6
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/05	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 491		
	EFFECTIVE DATE: 10/01/95		

SB 210 INTRODUCED BY BISHOP, ET AL.

GENERALLY REVISE AND CLARIFY THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO FISH & GAME		
1/21	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/31	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	37	12
2/10	3RD READING PASSED	37	13
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO FISH & GAME		
2/28	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED AS AMENDED	53	45
3/27	3RD READING CONCURRED	59	37
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	REVISED FISCAL NOTE RECEIVED		
3/30	REVISED FISCAL NOTE PRINTED		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	43	2
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 417		
	EFFECTIVE DATE: 07/01/95		

SB 211 INTRODUCED BY KEATING, ET AL.

REVISE LAWS RELATING TO A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY

1/20	INTRODUCED
1/20	FIRST READING
1/20	REFERRED TO FISH & GAME
1/24	HEARING
1/26	HEARING
2/03	COMMITTEE REPORT—BILL PASSED AS AMENDED
2/04	REREFERRED TO JUDICIARY
2/09	HEARING
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED

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SENATE BILL NO. 210

INTRODUCED BY Bishop Rea

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS; REVISING DEFINITIONS; REVISING PENALTIES; ALLOWING FORMER GAME WARDENS TO BE APPOINTED AS EX OFFICIO WARDENS; CREATING THE OFFENSE OF UNLAWFUL POSSESSION OF A HUNTING LICENSE OR PERMIT OF ANOTHER; CREATING THE FELONY OFFENSE OF SALE OF WILDLIFE OR WILDLIFE PARTS; AMENDING SECTIONS 87-1-102, 87-1-111, 87-1-503, 87-2-101, 87-2-102, 87-2-103, 87-2-106, 87-2-109, 87-2-110, 87-2-401, 87-2-402, 87-2-403, 87-2-404, 87-2-411, 87-2-501, 87-2-504, 87-2-507, 87-2-508, 87-2-509, 87-2-708, 87-2-803, 87-2-807, 87-3-101, 87-3-104, 87-3-109, 87-3-118, 87-3-301, 87-3-305, 87-3-402, 87-3-501, 87-5-404, AND 87-5-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-1-102, MCA, is amended to read:

"**87-1-102. Penalties.** (1) A person who purposely ~~or~~, knowingly, or negligently violates any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined not less than ~~$50~~ $100 or more than ~~$500~~ $1,000, imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, ~~shall~~ may be subject to forfeiture of ~~his~~ that person's license and the privilege to hunt, fish, or trap ~~within~~ in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period ~~of not less than 24 months from the date of conviction or forfeiture~~ set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting~~, or wasting of~~

a bighorn sheep, moose, wild ~~bison~~ buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined not less than $500 or more than ~~$1,000~~ $2,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion~~, or black bear~~ or any part of these animals ~~or wasting a deer, antelope, or elk~~ shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap~~, take, shoot,~~ or ~~kill~~ hunt a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) ~~A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.~~

~~(e)~~ A person convicted of purposely ~~or~~, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than ~~$50~~ $100 or more than $1,000, ~~or~~ imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this

state for ~~not less than~~ 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

~~(f)~~(e) A person convicted of hunting, fishing, or trapping while ~~his~~ that person's license is forfeited or ~~his~~ privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than ~~$1,000~~ $2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined not less than $500 or more than ~~$1,000~~ $2,000, ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under ~~subsection (2)~~ this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined not less than $500 or more than ~~$1,000~~ $2,000, ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 2. Section 87-1-111, MCA, is amended to read:

"87-1-111. (Temporary) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each ~~such~~ bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) ~~grayling and~~ fur-bearing animals, as defined in 87-2-101~~,~~ and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section. (Terminates June 30, 2003--sec. 2, Ch. 196, L. 1993.)

87-1-111. (Effective July 1, 2003) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing, taking, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, river-dwelling grayling, and white sturgeon, $300;

(e) paddlefish~~, grayling,~~ and fur-bearing animals, as defined in 87-2-101~~,~~ and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 3. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies, constables, all peace officers of the state or any subdivision of the state, all state forest officers, and, as authorized by cooperative agreement, ~~all~~ officers of the United States forest service, agents of the United States fish and wildlife service, peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state, former fish and game wardens, and field personnel of the department, as the director may appoint, are ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in chapters 1 and 2 of Title 23, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws."

Section 4. Section 87-2-101, MCA, is amended to read:

"**87-2-101. Definitions.** As used in this chapter, ~~and~~ chapter 3, and 87-1-102, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means ~~the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control~~ to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds. The term does not include unscented decoys, silhouettes, or other replicas of wildlife body forms or scents used only to mask human odor.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

~~(3)~~(4) "Commission" means the state fish, wildlife, and parks commission.

~~(4)~~(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(5)~~(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(6)~~(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(7)~~(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves ~~shall be~~ is restricted to the open season on upland game birds as defined in subsection ~~(12)~~(15) ~~below~~.

~~(8)~~(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(9)~~(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(10)~~(12) "Person" means individuals, associations, partnerships, and corporations.

~~(11)~~(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(12)~~(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(13)~~(16) "Wild buffalo" means buffalo or bison ~~which~~ that have not been reduced to captivity."

NEW SECTION. **Section 5. Lawful means of angling or fishing.** The only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule, are unlawful.

Section 6. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection ~~(2)~~(4) at the time the member entered the armed forces and continues to meet residency criteria of subsection ~~(2)~~(4); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and a certificate of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section. The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) ~~A person who has been a resident of the state of Montana for a period of 6 months immediately prior to making application for a license is eligible to receive a resident hunting, fishing, or trapping license. A person is considered a resident if the person meets the following criteria:~~

~~(a)~~ A person who has physically resided in Montana as the person's principal or primary home or

place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately prior to making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana ~~the person lives in Montana or has a fixed intent to return to this state when the person leaves it~~;

(b) the person files Montana state income tax returns as a resident if required to file ~~as a resident~~;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not ~~use~~ possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country ~~during the time the resident Montana license is valid~~; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student under 24 years of age who is enrolled in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

~~(3)~~(6) ~~Any~~ An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

~~(4)~~(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper

amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection ~~(4)~~ (7).

~~(5)~~(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 7. Section 87-2-103, MCA, is amended to read:

"**87-2-103. License required.** (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, any game bird, or any fur-bearing animal or ~~take, kill, trap, or~~ to fish for any fish within this state or ~~have, keep, or~~ possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts ~~thereof~~ of those animals or birds, except as ~~herein~~ provided by law or as provided by the department; or

(b) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ to fish for any fish, except at the places and during the periods and in the manner ~~herein~~ defined by law or as defined by the department; or

(c) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ fish for any fish within this state or ~~have, keep,~~ possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts ~~thereof~~ of

fur-bearing animals without first having obtained a proper license or permit from the department to do so; or

(d) trap or ~~snare or~~ attempt to trap ~~or snare~~ predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to ~~pursue, hunt, take, shoot, or~~ kill or attempt to ~~pursue, hunt, take, shoot, or~~ kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence."

Section 8. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license -- penalties for violation -- forfeiture of privileges.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state the applicant's name, age, occupation, ~~place of~~ address of permanent residence, and post-office address, the applicant's qualifying length of time as a resident in the state of Montana, whether a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102~~(4)~~(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102~~(4)~~(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing

license for ~~his~~ the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this ~~statute~~ subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section."

Section 9. Section 87-2-109, MCA, is amended to read:

"**87-2-109. Carrying and exhibiting license and identification.** (1) ~~It~~ Except as provided in [section 10(2)], it is unlawful for a person to whom a license or permit has been issued to fish ~~for or take any fish or pursue~~, to hunt~~, shoot, kill, or take~~ for any game bird or game animal, or to attempt to ~~trap, trap, or take~~ hunt for any fur-bearing animal in this state unless the person ~~has~~ is carrying the required license, licenses, or permit ~~in the person's possession~~ at the time.

(2) It is unlawful to refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it."

NEW SECTION. **Section 10. Unlawful possession of hunting license or permit of another -- penalties.** (1) Except as provided in subsection (2), it is unlawful for a person to carry or have physical

control over a valid hunting license or permit issued to another person while in any location that the species to be hunted may inhabit.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses issued to another person or persons, is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction.

Section 11. Section 87-2-110, MCA, is amended to read:

"**87-2-110. Alteration, attachment, or transfer of license.** ~~No~~ A person may not at any time alter or change in any material manner or loan or transfer any license to another person. ~~any license, nor may any~~ A person other than the person to whom ~~it~~ a license is issued may not use ~~it~~ the license. A person may not attach the person's license to a game animal killed by another person."

Section 12. Section 87-2-401, MCA, is amended to read:

"**87-2-401. Class A-1--resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $6, receive a Class A-1 license ~~which~~ that will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 13. Section 87-2-402, MCA, is amended to read:

"**87-2-402. Class B-1--nonresident upland game bird license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $55 may receive a Class B-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 14. Section 87-2-403, MCA, is amended to read:

"**87-2-403. (Temporary) Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ entitles the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ of the turkey, during ~~such~~ times and ~~such~~ places ~~as~~ that the ~~department~~ commission ~~shall authorize~~ authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $13 for nonresidents. Turkey tags ~~shall~~ must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of ~~his~~ that person's wildlife conservation license. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ entitles the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ of the turkey, during ~~such~~ times and ~~such~~ places ~~as~~ that the ~~department~~ commission ~~shall authorize~~ authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag ~~shall be~~ is $5. Turkey tags ~~shall~~ must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805

may purchase a wild turkey tag upon presentation of ~~his~~ that person's wildlife conservation license."

Section 15. Section 87-2-404, MCA, is amended to read:

"**87-2-404. Three-day nonresident captive-reared bird hunting stamp.** A person who is 12 years of age or older and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license."

Section 16. Section 87-2-411, MCA, is amended to read:

"**87-2-411. Stamp required to hunt waterfowl.** (1) It is unlawful for any person 15 years of age or older to ~~pursue,~~ hunt~~, shoot, or kill~~ waterfowl without first having obtained a valid waterfowl stamp from the department. The fee for ~~such~~ the stamp is $5.

(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans."

Section 17. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6, A-7--resident deer, elk, and bear licenses -- special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only~~,~~ and who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost ~~which~~ that will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, ~~$11 beginning March 1, 1992, and~~ $13 ~~beginning March 1, 1994~~;

(b) Class A-4, deer B tag, ~~$7 beginning March 1, 1992, and~~ $8 ~~beginning March 1, 1994~~;

(c) Class A-5, elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~;

(d) Class A-6, black or brown bear tag, ~~$11 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~;

(e) Class A-7, antlerless elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to ~~take~~ hunt antlerless elk in areas designated by the commission and at ~~such~~ the times and upon ~~such~~ the terms ~~as~~ set forth by the commission.

(b) ~~No~~ A person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section ~~shall~~ must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 18. Section 87-2-504, MCA, is amended to read:

"**87-2-504. (Temporary) Class B-7 and B-8--nonresident deer licenses.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $150; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific

administrative region or portion ~~thereof~~ of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1). (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8--nonresident deer licenses. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion ~~thereof~~ of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state."

Section 19. Section 87-2-507, MCA, is amended to read:

"**87-2-507. (Temporary) Class D-1--nonresident mountain lion license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $320 may receive a Class D-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-507. (Effective March 1, 2006) Class D-1--nonresident mountain lion license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $300 may receive a Class D-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license

under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy."

Section 20. Section 87-2-508, MCA, is amended to read:

"**87-2-508. Class D-2--resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of ~~$13 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~, may receive a Class D-2 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy."

Section 21. Section 87-2-509, MCA, is amended to read:

"**87-2-509. Tagging of carcasses of game animals.** (1) Each license issued by the department authorizing the holder of the license to ~~pursue, shoot, kill, capture, take, or possess~~ hunt game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When any person ~~takes or~~ kills any game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed ~~or taken~~ and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed~~, and when~~. When a game animal has been lawfully killed and the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who ~~tagged~~ lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) It is unlawful for a person who kills any game animal by authority of any license issued for the killing of the game animal to fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued

to the carcass of the game animal or portion of the game animal. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by the person. It is unlawful for a person to tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed."

Section 22. Section 87-2-708, MCA, is amended to read:

"**87-2-708. Class A-2--special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $8, a Class A-2 license ~~which shall authorize~~ that authorizes the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ with bow and arrow the game animals ~~so~~ authorized by the licenses held and to possess the carcass ~~thereof~~ of the game animals during seasons and in areas~~, as~~ designated by the department."

Section 23. Section 87-2-803, MCA, is amended to read:

"**87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years ~~old~~ of age or older and who is under 62 years of age.

(3) A resident or nonresident disabled person who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A disabled person issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is permanently physically handicapped and nonambulatory or that the person's mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or ~~may hunt by~~

~~shooting a firearm from within a self-propelled or drawn vehicle~~ that is parked in an area, not a public highway, where hunting is permitted. Nothing in this subsection allows a disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the disabled hunter by ~~pursuing,~~ hunting~~, taking, shooting, or killing~~ a game animal that has been wounded by the disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish ~~with hook and line or rod,~~ as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

Section 24. Section 87-2-807, MCA, is amended to read:

"**87-2-807. Taking migratory game birds for propagation -- avicultural permit.** (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101~~(7)~~(9), for the purpose of propagation. Before issuing an avicultural permit, the department ~~must~~ shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates ~~such~~ the migratory game birds, and the owner may sell or transfer ~~such~~ the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing ~~such~~ the permit.

(5) The department shall adopt rules implementing this section."

Section 25. Section 87-3-101, MCA, is amended to read:

"**87-3-101. General restrictions.** Except as provided in 87-2-803(4), it is unlawful for anyone to ~~take, capture, shoot, kill, or attempt to take, capture, shoot, or kill~~ hunt or attempt to hunt any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-202, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight, spotlight or other artificial light, trap, snare (except as allowed in 87-3-107(1)), ~~or~~ salt lick, or bait~~; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set~~."

Section 26. Section 87-3-104, MCA, is amended to read:

"**87-3-104. Unlawful to hunt or fish during closed season.** It is unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to attempt to ~~take, shoot, kill, or capture~~ hunt or to ~~take,~~ hunt~~, shoot, kill, or capture~~ any ~~such~~ game animal or ~~such~~ game bird or to fish for or catch any fish."

Section 27. Section 87-3-109, MCA, is amended to read:

"**87-3-109. Attempting to take simulated wildlife decoy -- penalty.** (1) It is unlawful for a person

to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting ~~or taking~~ of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to ~~take~~ hunt a simulated wildlife decoy is the same as prescribed for ~~unlawful taking~~ the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated.

(3) In addition to any other penalty, a person convicted under this section shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys."

Section 28. Section 87-3-118, MCA, is amended to read:

"**87-3-118. ~~Sale~~ Felony sale or possession of ~~unlawfully taken~~ wildlife -- penalty.** (1) A person commits the offense of sale of unlawfully taken wildlife if ~~he~~ the person purposely or knowingly:

(a) sells, barters, purchases, or exchanges unlawfully taken wildlife for anything of value; or ~~if he~~

(b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value, ~~unlawfully taken wildlife~~.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if ~~he~~ the person purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) (a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) sells, barters, purchases, or exchanges wildlife for anything of value;

(ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than $1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total.

(4) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than $1,000.

(5) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction."

Section 29. Section 87-3-301, MCA, is amended to read:

"**87-3-301. Shotgun loads regulated by department.** ~~No~~ A person may not use a shotgun to hunt~~, kill, or shoot~~ deer or elk except with weapon type and loads as specified by the department."

Section 30. Section 87-3-305, MCA, is amended to read:

"**87-3-305. Unlawful to ~~take~~ hunt deer within city or town boundaries.** It is unlawful to ~~shoot, kill, take~~ hunt~~, or cause to be shot, killed, taken, or captured~~ or ~~to~~ attempt to ~~shoot, kill, take, or capture~~ hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state."

Section 31. Section 87-3-402, MCA, is amended to read:

"**87-3-402. Unlawful to violate closed season on certain game birds.** It is unlawful for any person to hunt~~, shoot, kill, capture, possess, or cause to be hunted, killed, or captured~~ or attempt to ~~shoot, kill, or capture~~ hunt any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until ~~such time as~~ the ~~department shall provide~~ commission provides an open season on any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey."

Section 32. Section 87-3-501, MCA, is amended to read:

"**87-3-501. Open and closed season for fur-bearing animals -- exception.** (1) It ~~shall hereafter be~~

is unlawful and a misdemeanor for ~~any~~ a person to ~~shoot,~~ trap~~, kill, or capture or cause to be shot, trapped, killed, or captured or to attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ or hunt or attempt to trap or hunt any fur-bearing animal until ~~such time as~~ the commission ~~shall provide~~ provides an open season on any ~~marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ fur-bearing animal. The furs and hides of ~~such~~ fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as ~~hereinafter~~ provided by law.

(2) When it is shown that muskrats or beaver are doing severe injury upon or are a menace to the structures, canal banks, or other works of an irrigation project or district or stock water pond, any employee or resident landowner on ~~such~~ the project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of ~~such~~ the project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the director a permit ~~so~~ to do so, except that from June 1 to August 31, both dates inclusive, of each year ~~no such~~ a permit ~~shall be~~ is not required."

Section 33. Section 87-5-404, MCA, is amended to read:

"87-5-404. Flathead Lake bird preserve -- university of Montana biological reserve. (1) Those ~~certain~~ islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of ~~said~~ the land returned to the general land office by the surveyor general, ~~be and the same~~ are ~~hereby made~~ a perpetual place of refuge for birds of all kinds, ~~the same~~ and those lands are to be called ~~and known as~~ the "Flathead Lake bird preserve"~~, which said lands shall be specially~~. The lands are reserved for the breeding, propagating, and protection of all species of birds.

(2) It ~~shall be~~ is unlawful for any person to ~~kill, shoot, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird on ~~said~~ the islands or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ hunt any bird within a distance of 400 yards from the shoreline of ~~said~~ the islands.

(3) It ~~shall be~~ is unlawful for any person to ~~kill, shoot, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird or animal on the university of Montana biological reserve located on

the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to ~~shoot at, wound, or kill~~ hunt any bird or any animal within 400 yards of ~~said~~ the university of Montana biological reserve or to discharge any firearms on ~~said~~ the reserve or within 400 yards ~~thereof~~ of the reserve."

Section 34. Section 87-5-406, MCA, is amended to read:

"**87-5-406. Gates of the Mountains game preserve.** (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of ~~said~~ upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to ~~said~~ the beacon, then along the bulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across ~~said~~ the river and lake to the forest service boundary to the wilderness boundary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of beginning, intending ~~hereby~~ to include in ~~said~~ the game preserve all that territory adjacent to the Gates of the Mountains area, ~~shall be~~ is called ~~and known as~~ the Gates of the Mountains game preserve.

(2) It ~~shall be~~ is unlawful for any person to ~~shoot, kill, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird or fur-bearing animal in ~~said~~ the area or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ hunt any bird or fur-bearing animal within ~~said~~ the preserve. ~~Said~~ The area ~~shall be~~ is closed to all hunting at all times."

NEW SECTION. **Section 35. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 36. Codification instruction.** [Sections 5 and 10] are intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [sections 5 and 10].

NEW SECTION. **Section 37. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0210, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising and clarifying the law regarding violations of fish and game criminal statutes and residency requirements; revising definitions; revising penalties; allowing former game wardens to be appointed ad ex-officio wardens; creating the offense of unlawful possession of a hunting license or permit of another; and creating the felony offense of sale of wildlife or wildlife parts.

ASSUMPTIONS:

1. Based on a Wisconsin study, the Department of Fish, Wildlife and Parks (FWP) estimates that violations will decrease by 25% when penalties are increased.
2. Fines for misdemeanors increase from not less than $50 or more than $500 to not less than $100 or more than $1,000.
3. Approximately 265 individuals annually are fined the minimum by Justices of the Peace. A 25% reduction would result in approximately 200 violators paying the revised $100 minimum fine. Fine revenue will increase from $13,250 to $20,000.
4. Approximately 60 individuals annually are fined the $500 maximum. In theory, 25% of the 60 or 15 individuals will be deterred from committing a misdemeanor. Approximately half or 23 of the 45 violators will be fined the $1,000 maximum and 22 will be fined $500. Fine revenue will increase from $30,000 to $33,000.
5. In accordance with 3-10-601, MCA, fines, penalties, forfeitures, and fees collected by Justices of the Peace are distributed 50% to county general fund and 50% to state treasure. The state treasurer distributes the funds as follows:
   - 27.88% to the state general fund
   - 09.09% to the Department of Fish, Wildlife and Parks
   - 11.76% to the Department of Transportation
   - 33.86% to the Highway Traffic Safety Division, Department of Justice
   - 00.57% to the Department of Livestock
   - 15.90% to the Department of Justice, Crime Victims Unit
   - 00.94% to the Department of Family Services
5. Restitution for illegal killing or possession of certain wildlife will increase. Based on historic information, it will increase by $1,500 per year. FWP receives 100% of the restitutions.

(continued on page 2)

Dave Lewis 1-27-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Al Bishop
AL BISHOP, PRIMARY SPONSOR DATE

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Revenues:		
Fines:		
County General Fund	5,375	5,375
State General Fund	1,499	1,499
Department of Transportation	632	632
Highway Traffic Safety	1,820	1,820
Department of Livestock	31	31
Department of Family Services	50	50
Department of Fish, Wildlife & Parks	488	488
Crime Victims	855	855
Total	10,750	10,750
Restitution:		
Department of Fish, Wildlife & Parks	1,500	1,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Increase of fine revenue to the counties.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Serve as a deterrent and help stem the unlawful abuse of wildlife in Montana.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0210, reference bill

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising and clarifying the law regarding violations of fish and game criminal statutes and residency requirements; revising definitions; revising penalties; allowing former game wardens to be appointed ad ex-officio wardens; creating the offense of unlawful possession of a hunting license or permit of another; creating the felony offense of sale of wildlife or wildlife parts; and providing that one-half of the money from certain fines relating to violations of state fish and game laws be deposited in the state general fund.

ASSUMPTIONS:

1. Based on a Wisconsin study, the Department of Fish, Wildlife and Parks (FWP) estimates that violations will decrease by 25% when penalties are increased.
2. Fines for misdemeanors change from not less than $50 or more than $500 to not less than $50 or more than $1,000.
3. Approximately 265 individuals annually are fined the minimum by Justices of the Peace. As the minimum fine will remain at $50 there will be no change in projected revenues.
4. Approximately 60 individuals annually are fined the $500 maximum. In theory, 25% of the 60 or 15 individuals will be deterred from committing a misdemeanor. Approximately half or 23 of the 45 violators will be fined the $1,000 maximum and 22 will be fined $500. Fine revenue will increase from $30,000 to $34,000.
5. In accordance with 3-10-601, MCA, fines, penalties, forfeitures, and fees collected by Justices of the Peace are distributed 50% to county general fund and 50% to state treasure. The state treasurer distributes the funds as follows:
   - 27.88% to the state general fund
   - 09.09% to the Department of Fish, Wildlife and Parks
   - 11.76% to the Department of Transportation
   - 33.86% to the Highway Traffic Safety Division, Department of Justice
   - 00.57% to the Department of Livestock
   - 15.90% to the Department of Justice, Crime Victims Unit
   - 00.94% to the Department of Family Services
6. Restitution for illegal killing or possession of certain wildlife will increase. Based on historic information, it will increase by $1,500 per year. FWP receives 100% of the restitutions.
7. This legislation as amended will require that the state treasurer deposit in the general fund one-half of the money received from the fines pursuant to 87-1-102, MCA. FWP received $247,676 in fine revenue in FY94 and projects the same revenue for each year of the biennium. In accordance with the amendment, one-half of the projected revenue will go to the general fund.

(continued on page 2)

Dave Lewis 3-30-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Al Bishop 3-30-
AL BISHOP, PRIMARY SPONSOR DATE

Fiscal Note for SB0210, reference bill
SB 210-#2

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Revenues:		
Fines:		
County General Fund	2,000	2,000
State General Fund	557	557
Department of Transportation	235	235
Highway Traffic Safety	677	677
Department of Livestock	12	12
Department of Family Services	19	19
Department of Fish, Wildlife & Parks	182	182
Crime Victims	318	318
Total	4,000	4,000
Restitution:		
Department of Fish, Wildlife & Parks	1,500	1,500
Redistribution FWP fine revenue:		
General Fund (01)	123,838	123,838
Fines - Fish/Game Violations (02)	(123,838)	(123,838)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Increase of fine revenue to the counties.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Serve as a deterrent and help stem the unlawful abuse of wildlife in Montana.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on January 31, 1995, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 210
Executive Action: None

(Tape: 1; Side: A; Approx. Counter: 58.)

HEARING ON SB 210

Opening Statement by Sponsor:

SENATOR AL BISHOP, SD #9, BILLINGS, stated that he had introduced this bill at the request of the Department of Fish, Wildlife & Parks. SB 210 is a major piece of legislation dealing with fines and forfeitures, restitution, and clarification of residency requirements. He asked **Pat Graham, Department of Fish, Wildlife & Parks (DFWP),** to explain components of the bill.

Proponents' Testimony:

PAT GRAHAM, Director, DFWP, distributed copies of his testimony as well as a document explaining the bill by sections **(EXHIBITS 1 AND 1A). Mr. Graham** urged passage of SB 210, saying it would be of major assistance to the department.

DAVID BROWN, Montana Bowhunters Association, also urged support of the bill, as it will promote ethical hunting and be of assistance to game wardens.

JIM RICHARD, Montana Wildlife Federation, spoke in support of the bill as an enhancement of hunting ethics and respect for wildlife.

JANET ELLIS, Audubon, said SB 210 would help the state manage wildlife populations and avoid listings under the Endangered Species Act.

BILL HOLDORF, Skyline Sportsmen, supported the bill but was concerned about the paragraph dealing with an exception in the residence criteria for students from Montana who are under 24 years of age. This age limit should be raised because people who have been in the service before going to college in another state could be older. The residence requirement should be tied to state income tax.

TONY SCHOONEN, Skyline Sportsmen and Coalition for Appropriate Management of State Lands, said he thought the bill would be a big step forward in strengthening game laws. DFWP region 3 (southwestern Montana) has 50 percent of the elk killed in the state; wildlife are numerous, but so are people.

ROBIN CUNNINGHAM, Fishing Outfitters Association, urged support of the bill and concurred with Audubon in the hope that it will allow enhancement of native fish.

JEAN JOHNSON, Montana Outfitters & Guides Association, also supported the bill.

VICKI FRASER, Lewis & Clark Deputy County Attorney, urged support of the bill, especially the residency section, because there are sizable loopholes in current law. These cases are extremely time consuming to investigate and prosecute. They are also costly because the evidence is in other states.

BETH BAKER, Department of Justice, said passage of this bill would result in a great improvement from the enforcement perspective. Fish and game calls mean a long process. She particularly approved of Section 11 on page 12 that clarifies the law on tagging someone else's animal. Section 21 on page 18 clarifies that a special permit can only be used in the proper district. She urged passage of the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR BOB PIPINICH, SD #29, MISSOULA, asked the intent of Section 21. **Pat Graham,** replied with an example: An individual went to a hunting district carrying both A and B tags. The B tag was valid in another district but it was used on the animal taken. This person had a proper tag for the animal in his possession (the A tag) but he didn't use it - he used a tag that was valid in another district. The jury found him guilty of illegal taking. This section is meant to clarify use of tags.

SENATOR PIPINICH asked if he would be required to pay damages if, while walking through the woods, he thought he saw a deer and shot a hole in the motor that makes a decoy move its head. **Mr. Graham** responded that the department has a written policy that states decoys can only be used in certain situations; they are set out after dark to catch spotlighters or branch-antlered decoys are put into spikes-only districts.

SENATOR BRUCE CRIPPEN, SD #10, BILLINGS, asked if a tag must be placed on one of the portions of meat after it is boned and wrapped. **Bob Winfield, Enforcement Division, DFWP,** responded that it is all right to just put the tag in the freezer.

SENATOR MIKE SPRAGUE, SD #6, BILLINGS, asked what constituted a violation when a meat processor had more than three tags in his possession. **Mr. Winfield** said the department had found through undercover investigations that some meat processors were holding tags in their meat processing plants after the meat had been picked up so they could be used again. There is no problem for a meat processor who has tags only for the animals he is processing.

SENATOR PIPINICH asked if a written statement would be needed if he shot an elk and sent it home with someone else and that person were stopped in possession of the animal bearing **Senator Pipinich's** tag. **Mr. Graham** said a written statement would not be necessary unless it would be possible to prove that the person possessing the animal had not been in the field with **Senator Pipinich.** If an individual is able to get someone to say an animal was a gift and that animal is legally tagged, there is no problem.

SENATOR GARY FORRESTER, SD #8, BILLINGS, commented that he had a deer mounted three years ago and the taxidermist wanted the tag so he left the tag with the horns and had no tag for the meat in his freezer. **Mr. Winfield** said the law states tags remain with the major portion of the meat. On a taxidermist's reporting form there is a place for the owner's name, address and tag number and that is all the taxidermist needs.

SENATOR FORRESTER asked where fishing and hunting fines are credited. **Mr. Graham** said this is explained on the fiscal note **(EXHIBIT 2)**. If SB 83 passes, however, that money will go to the General Fund.

CHAIRMAN MESAROS asked **Bob Winfield** to explain how a landowner will be affected if he finds a black bear in a flock of sheep. **Mr. Winfield** responded that there is a separate statute covering depredation and the bill under consideration does not affect that statute.

CHAIRMAN MESAROS asked **Mr. Winfield** to explain changes in the statutes that apply to the use of snares. **Mr. Winfield** replied that there have been two conflicting statutes. The general legal taking statute made it illegal to take game animals, game birds or any other animals with a snare. Then the snaring statute allowed use of a snare to take any animal or bird. That has been clarified by restricting snaring to furbearers and predators but not game animals or birds.

(Tape: 1 Side: B; Approx. Counter: 18)

SENATOR WILLIAM CRISMORE, SD #41, LIBBY, said Section 3 gives the department authority to designate retired game wardens as ex officio wardens. At a previous meeting, **Mr. Graham** asked for more wardens; **SENATOR CRISMORE** asked if this would be a better solution.

Mr. Graham said he had requested funds to contract with retired game wardens through the Natural Resource Subcommittee. SB 210 makes it possible to designate them as ex officio wardens who do not have to qualify as peace officers, resulting in a considerable savings for these officers. **SENATOR CRISMORE** asked how many were likely to volunteer. **Mr. Graham** commented that the need will exceed the supply. Retired game wardens who are willing to come back to work do not always live in the areas where they are needed. So far this year, the department has spent $15,000 contracting with retired wardens.

<u>Closing by Sponsor</u>:

SENATOR BISHOP said a great deal of information had been brought out through this hearing. SB 210 is a good piece of legislation. It is important because Montana's wildlife resource is valuable to people from all over the world.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:15 p.m.

KEN MESAROS, Chairman

SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 1/31/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN	X	late X	
WILLIAM CRISMORE	X		
JOHN HERTEL	X		
KEN MILLER	X		
MIKE SPRAGUE	X		
GARY FORRESTER	X		
JUDY JACOBSON	X	late X	
TERRY KLAMPE	X		
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

SEN:1995
wp.rollcall.man
CS-09

SENATE FISH AND GAME
EXHIBIT NO. 1
DATE 1/31/95
BILL NO. SB 210

TSB210P.S

Senate Bill No. 210
January 31, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the Senate Fish and Game Committee

This bill amends various criminal statutes relating to hunting, fishing and trapping. In addition, section 4 both amends and adds definitions of the terms "hunting," "angling," "trapping," and "baiting" to clarify what actions are prohibited by law. These clarifications will help with the enforcement of statutes and the prosecution of violations.

Many of the amended sections are included in this bill only to incorporate the revised definitions within existing law. Those sections that simply incorporate the new definitions are listed in the summary we've passed out. (Sections numbered 7, 12, 13, 15-20, 22-24, 26, 29, 30, 33 and 34.)

I will explain the substantive changes to the criminal law which are also discussed in the section-by-section summary provided for your reference. Section 1 of the bill proposes to amend the penalty section (87-1-102). The addition of the term "negligently" to "purposely or knowingly" prevents use of the frequently attempted defense of "I can't be guilty because I didn't know." It places a reasonable requirement of responsibility on the sportsperson to know the laws before participating in hunting, fishing, or trapping.

Proposed changes to the fines category of the penalty section raise the minimum fines from $50 to $100 and some of the maximum fines from $1,000 to $2,000. This will provide a greater deterrent. The minimum fine has been $50 since 1977. A court could impose a $50 fine (plus $15 in court costs) on a nonresident who failed to buy a $40 fishing license. The small size of the fine and slight risk of getting caught does not deter violators. In addition, increasing the maximum fine will better enable the courts to address the more serious misdemeanor offenders. The court retains its discretion to set the fine at whatever dollar amount it considers appropriate within the minimum and maximum amounts set by the statute.

The bill also proposes to increase the fine for the illegal taking of black bears. We feel the deterrent effect of raising the fine from the $300-$1,000 range, to the $500-$2,000 level will help address growing illegal commercialization problems with black bears and the Asiatic market.

The changes dealing with loss of privileges do not affect the term of suspension, but merely clarify the relationship of the court and

the Department to assure a consistent statewide imposition of suspensions. Some courts now notify individuals of the loss of privileges while others believe the Department is responsible. This proposal will standardize the method by requiring the Department to notify the convicted violators and collect any licenses forfeited under this statute. As revocations are mandatory for some violations, everyone forfeiting bond or found guilty of a violation that mandates loss of privileges will in fact lose them and be so notified.

Section 2 amendments increase the restitution values of black bear, adult bull trout and river dwelling grayling. There is a very lucrative market for black bear parts including claws, teeth, paws and, most notably, gall bladders. Bull trout and river dwelling grayling are species of special concern to Montana. Deterring unlawful harvest or commercialization of these fish species is essential to the state's management of these populations. Both species are under consideration by the U.S. Fish and Wildlife Service for listing as threatened species.

We are proposing to raise black bear restitution from $500 to $1,000 per bear, enabling prosecutors to file a felony charge with two, rather than three, unlawful takings or sales of bears. Bull trout restitution is currently $10 per fish and all grayling are $100 per fish. We are requesting that restitution for bull trout over 18 inches long be raised to $500 per fish. This is necessary to protect adult spawners. Similarly we feel it is necessary to protect river dwelling grayling by raising restitution to $300 per fish. This change will not apply to lake dwelling grayling, as their populations are not in danger, and the restitution for them will be lowered to the standard $10 per fish.

Section 3 allows the director to appoint retired game wardens as ex officio officers. Many of these individuals have let their Peace Officer certification lapse since retirement. We would like to continue to be able to contract with them as needed for help during the hunting season. Their Peace Officer status allowed them to enforce Fish, Wildlife and Parks laws and regulations, but without this status they need ex officio authority.

Section 4, as mentioned, contains the definitions for angling, baiting, hunting and trapping. The changes are discussed beginning at the bottom of page 2 of the handout. The major change is the addition of a definition for baiting which includes the use of foodstuffs or odors used to attract game animals.

Section 5 is a new section but the oldest law on fishing. The law became part of the definitions when in fact it should have been restricting fishing to the use of hook or single line, unless other means have been approved by the commission. Instead the definition limited what would be considered fishing. Other methods of obtaining fish were not specifically prohibited. This section will clarify lawful methods of fishing and simplify prosecutions.

EXHIBIT 1
DATE 1-31-95
SB 210

Section 6 revises the residency statutes. As the desirability of hunting and fishing in Montana increases each year, our problems with persons purchasing resident licenses unlawfully also increase. County prosecutors have become frustrated with their increasing workload and the difficulties encountered prosecuting these cases. To remedy these problems we have more clearly defined the criteria needed to purchase resident hunting and fishing licenses in Montana. A person will have to physically live in Montana for 180 consecutive days and meet existing criteria before applying for a resident license. They must then physically live in Montana for 120 days per year to maintain that residency.

There is an exception for students from Montana under 24 years of age who are studying out of state. The residency status of persons in the armed forces is limited to persons stationed and on active duty in Montana with a possible exception for persons entering the military from Montana. Reassignment to another state ends their residency status.

These amendments to the statute will enable prosecutors to spend far less time preparing these cases and be able to prosecute based on objective requirements.

Section 8 changes the information required to apply for resident licenses by requiring the person's actual street address. We have problems with nonresidents obtaining a local post office box then applying for resident licenses. This makes it more difficult to identify these individuals as nonresidents for licensing purposes.

Section 9 amends the statute on carrying and exhibiting a license by clarifying that licenses must be carried when sportspersons are in the field. The amendment does, however, allow a person to be carrying the license of their spouse or any minor children when in the field.

Section 10 is a new section dealing with possessing or carrying licenses in the field. In many of our undercover investigations, unfilled licenses were left with the hunting camp or outfitter and were later filled by others or used to cover illegally taken animals to be transported. This has become a very serious problem and it is difficult for wardens to identify illegally taken animals. This section would prohibit the practice of having or controlling licenses of people other than spouse or minor children.

In addition, commercial offenders such as outfitters, guides, and meat processors could be charged with a felony if they control more than three licenses. Fewer than three licenses would be a misdemeanor offense. Examples of problems are found in the handout on pages 4 and 5.

Section 11 changes the tagging statute. Prosecutors have difficulty under the present language of the statute with cases in

which an actual, physical transfer of the license from person to person does not take place. For instance, when an animal is taken by one person but tagged by another, wardens have had problems using this statute as a lesser offense to illegal taking, a harsher penalty. Persons convicted of illegal taking lose their hunting privileges.

Section 21 requires that game animals must be tagged with tags valid in the specified district. It also clarifies that legal ownership of game does not change to the hunter unless the animal is lawfully taken and tagged. This avoids forfeiture problems with confiscating unlawfully taken game from violators.

Section 25 corrects the inconsistencies between sections 87-3-101 and 87-3-107. Section 87-3-101 restricts the manner in which game may be harvested and forbids taking game by the use of a snare. Section 87-3-107 provides that any animal or bird may be taken by a snare if certain conditions are followed. We propose to make these laws consistent. This amendment also makes baiting, as defined, illegal. The present law is unclear since there is no definition of "other device."

Section 27 clarifies the violation to be cited when charging an individual who has shot a wildlife decoy. It has been unclear if wardens should charge a violator using the unlawful taking statute that pertained to decoys even if the violation would have been a lesser charge if the violator had been shooting at an actual animal. For example, if the violator was shooting from a public road at the decoy, and this was the only violation that occurred, it is not appropriate to charge the individual with unlawful taking of the wildlife decoy. If the decoy had been a live animal, the only charge would have been shooting from the roadway.

This section also provides a restitution charge of $50 per violation of the decoy statute. This money will be used to repair decoys shot by violators and is estimated by the Department based on the average amount needed to cover expenses.

Section 28 amends the felony section to include sale of lawfully taken game of over $1,000 in value and includes meat, organs, tissue, or fluids. Under existing law an individual can sell huge quantities of meat or other animal parts and risk only a misdemeanor fine. This change does not prohibit already lawful sales of heads, antlers, hides or mounts.

We have added a poundage limit to address quantities of processed meat. Many of our investigations deal with game that has already been processed, making it difficult to determine the number of animals represented. A buck deer averages 40 pounds of meat, a bull elk averages 172 pounds of meat. The proposed 150 pounds of meat would be equal to four buck deer or just over one bull elk. A lesser quantity would continue to be a misdemeanor violation, and

EXHIBIT 1
DATE 1-31-95
SB 210

the county attorney always has the discretion to charge the violator with a misdemeanor rather than a felony.

Another problem we have encountered is a number of individuals transporting game animal parts which are unlawful to sell in Montana to another state where they can be legally sold. This totally eliminates the effectiveness of our statutes and puts our wildlife in jeopardy of increased commercialization. Both Idaho and Wyoming allows sales prohibited under Montana law. We propose to make it unlawful to transport wildlife valued at over $1,000 out of state for the purpose of selling it.

Many of the serious violators we investigate commit violations over a long period of time. Under present law, it is unclear if the violations can be grouped together for felony prosecution. The proposed amendment will enable us to group violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted.

Section 32 amends the closed season statute for furbearing animals (87-3-501). This statute inadvertently omitted bobcats, wolverines and northern swift fox from the closed season statute. This amendment refers to furbearing animals which are defined in 87-1-101 (section 4 of the bill).

SENATE FISH AND GAME
EXHIBIT NO. 1A
DATE 1/31/95
BILL NO. SB 210

SENATE BILL 210

ENFORCEMENT REVISION BILL

SUMMARY OF CHANGES - BY SECTIONS

Section 1: Amends general penalty statute for fish and game violations.

- The addition of "negligently" was at the request of prosecutors. This addition places the reasonable responsibility of knowing the rules and regulations on the sportsmen and women, before they participate in their chosen activity. For the prosecutor, this negates the defense of "I can't be guilty, I didn't know."

- Raises minimum fines from $50 to $100. These values are more in line with today's penalties, as this category has not been changed since 1977. The increase is expected to work as a deterrent, especially where the cost of a license is similar to the fine for failing to have one.

- The maximum fine for flagrant violations would be increased from $1000 to $2000. Offenses would, for the most part, be filed in justice court, however justice and district court have concurrent jurisdiction for misdemeanors over $1000. (3-10-303,MCA.)

- Elevates black bears to the higher category of fines under subsection (2)(a) (from fines of $300 to $1000 to fines of $500 to $2000). (Recommended because of the high commercial value of black bears and the increased poaching problem).

- Deletes subsection (d) of section (2). This section has been clarified and is contained the general penalty section. This allows the court discretion to suspend any or all license privileges.

- The other additions to the statute require the department to give notice of loss of privileges and to receive surrendered licenses. This clarifies the relationship of the court and the department with respect to forfeiture and notification of loss of privileges. This will assure notification of the violators if their license privileges are suspended, and for how long. Previously the department's only authority was in 87-1-108, MCA (under which it could suspend privileges for non compliance with a citation or sentence).

  Privilege suspensions are mandatory for some violations, as are minimum lengths of suspension, when there is a conviction or forfeiture. This will insure a consistent method of application statewide, while retaining the court's discretion to impose loss of privileges.

With this system in place, we will avoid the situations where a violator was not notified of loss of privileges, purchased a license or licenses, then is required to return the licenses for a refund, as per the court's order. This may be a substantial inconvenience if plans and preparations for a hunting or fishing trip have been made.

The change proposed for this statute will improve the department's ability to comply with the responsibilities under the wildlife violator compact, if Montana becomes a member state through proposed legislation.

Section 2: Makes changes in restitution amounts.

- Increases black bear restitution from $500 to $1000 per bear. The intent of this revision is to curb the illegal traffic in black bear parts. Increasing restitution values allows prosecutors to file felony rather than misdemeanor charges with two unlawful takings or sales, rather than the current three.

- Increases restitution on bull trout. Currently restitution for illegal bull trout is $10 per fish. Bull trout are a species of special concern to Montana. To deter illegal harvest and commercialization of bull trout we propose restitution at $500 per fish over 18 inches long. This provides the capability of felony prosecution if three fish over 18 inches long are taken.

- River dwelling grayling have also been proposed for an increase in restitution from $100 to $300 because of their status. The taking of four river dwelling grayling could lead to a felony charge. Lake grayling are not in need of special protection.

Section 3: Adds retired game wardens to possible ex officio status

- Retired game wardens are being added to the list of persons the director may appoint as ex officio wardens. The department has the authority to contract with retired game wardens as needed. Not all retired game wardens are eligible to be ex officio under this statute. If their POST certification has lapsed, this change would still allow them to be appointed by the director and would clarify their authority.

Section 4: Amends and adds definitions.

- Amends the definition of "angling" or "fishing" by omitting the "by hook and single line or single rod, in hand or within

immediate control." Fishermen use a variety of methods to take fish, including spears, gigs, nets, bows and arrows, set lines and snagging. This proposal will enable prosecutors to avoid the defense "how could my client have been fishing, he wasn't using a line, hook or rod?"

- The definition of baiting is necessary for the enforcement of 87-3-101 (section 25 of this bill). By adding "bait" to 87-3-101 and a definition of bait in the definition section, the law will more clearly prohibit the use of foodstuffs or odors to attract game animals. Present law prohibits salt licks and other devices. The argument can be made that food or odors are not a "device." This will help greatly to successfully prosecute unethical hunters and outfitters who place salt blocks, scents, food stuffs or other attractants near their stands to attract game animals. The proposed changes will not affect the use of unscented decoys or replicas of wildlife currently legally used.

- Hunt is defined. With an encompassing definition of hunting our statutes are streamlined and understandable, enabling the courts to determine if a violation has been committed. This definition may enable the game warden to act before an animal is unlawfully harvested, if he observes someone shooting at a game animal for example. The law still requires proof of intent to take the animal.

- Trapping is defined to make it possible to enforce individual quotas. Under current law, anyone can work a trapline, regardless if they have reached their personal quota. The traps must give a name and address, but several people can be listed on the trap, and anyone may work the trapline so long as the owner of the trap does not complain. In one case in Central Montana, seven people were regularly working a trapline. Only one had purchased a trapping license. The county attorney advised against citing the unlicensed persons under the current law.

Section 5: Adds a new section restricting fishing to by hook or single line or single rod unless other means have been approved by the commission. Under current law there is no clear prohibition since the method of fishing was only in the definition section.

Section 6: Revises residency requirements.

- The proposed changes will require a person to physically live in Montana for 180 days before applying for a license. Once residency has been established, the person must live in Montana at least 120 days per year to maintain the residency.

- A person's Montana home must be his or her principal place of residence, and all other existing criteria must be met.

- There is a student exception for students from Montana under 24 years old who are studying out-of-state.

- The military exception is clearly limited to military personnel stationed in Montana. Reassignment to another state ends their residency status.

- Prosecutors have had numerous problems prosecuting nonresidents, especially under the "fixed intention to return." It is difficult to prosecute because the defendant claims that he is a Montana resident and will return to Montana as soon as he can. He intends to live here permanently (has a "fixed intent to return"). There is no clear objective criteria under the present statute. Convictions depend on whether the jury believes or dislikes the defendant.

Section 7: The license requirement statute is simplified because of the new definitions. (This change was made by Legislative Council.)

Section 8: The section on application for a license is amended to require the actual address in addition to a post office box. We have problems with nonresidents obtaining a post office box and using it as a local address. The change would make it easier to determine a person's actual residence.

Section 9: Carrying a license - amended to conform with section 10 which permits a person to carry the license of a spouse or a minor. Also clarified to conform to the definitions and to be more easily understood.

Section 10: Unlawful possession of hunting licenses issued to another person

- Prohibits one person from possessing or having another person's hunting or fishing license, unless the license is their spouse's or minor child's. Although there are legitimate reasons for a person carrying their spouse's or a child's license while they are hunting or fishing together, there is generally no good reason to carry or control licenses belonging to others.

- Without the proposed change, the mere possession of licenses of another is not an offense. The game warden has to wait until the wildlife is killed or tagged illegally to cite them.

EXHIBIT 1A
DATE 1-31-95
SB 210

- Examples of abuses:

  - During undercover investigations, officers have found "extra" licenses which were used or intended to be used to cover illegally taken wildlife. One suspect had a coffee can full of licenses in his meat packing business which were used to cover untagged and illegally taken wildlife brought into his business.

  - Undercover investigators observed guides filling their neighbors' licenses and clients leaving their unfilled licenses with the outfitter for use by other clients. One suspect normally fills ten to twelve licenses for non-family members where he keeps the racks and capes and gives the license holders the meat. Another suspect offered his wife's license to an investigator under the proposal that the investigator bring them the meat but keep the rack.

  - In another case, an outfitter supplied illegally obtained resident licenses for out-of-state hunters. Another unlicensed outfitter purchased several doe licenses to supply to non-resident hunters. These were used to cover illegal taking of buck deer which had all evidence of sex removed.

  - In another case, an unlicensed outfitter promised his clients that he would supply licenses for all the wildlife they took. Seventeen hunters were prosecuted for hunting without licenses.

- Because of the significant potential for abuse of the licensing process, the department supports a felony penalty for possession of three or more non-family licenses by a commercial violator (outfitter, guide or meat processors). Fewer than three licenses not in the name of the violator would be a misdemeanor under the proposed bill.

Section 11: Attachment or transfer of a license.

- Under current law it is unlawful to transfer a license to another person. This amendment would make it unlawful to attach a license to an animal shot by someone else. The action of placing a tag on another animal could also be considered unlawful possession, but such a charge would result in a much harsher penalty which may be inappropriate in some cases. This change gives a game warden the option to charge a person with a lesser offense.

Sections 12 and 13: These amendments were made by Legislative Council due to definition changes.

Section 14: Wild Turkey Tags - These amendments were made by Legislative Council due to definition changes.

- Also "department" was changed to "commission" because the commission sets the seasons, not the department.

Sections 15 through 20: These amendments were made by Legislative Council due to definition changes.

Section 21: Tagging game animals

- This statute is amended at the request of prosecutors. This change clarifies the violation when a person attaches a tag valid in one district to an animal killed in another district. In a recent case, the defendant had an A-tag license. He also had a B-tag valid in a specific area. He shot a doe and attached the B-tag. He was cited for failure to have a valid license, but he had a valid license he chose not to use. The defense counsel raised this issue. The statute would be clarified by making it an express violation under the tagging requirements.

- The amendments also clarify that legal ownership of a game animal does not change from the public to a hunter if the hunter has taken the animal unlawfully. This change avoids legal problems with forfeitures. Confiscating an unlawfully taken game animal is thus not a forfeiture because the hunter never legally possessed the animal.

Sections 22 through 24: These amendments were made by Legislative Council due to definition changes.

Section 25: General restrictions

- This statute is being amended because it is inconsistent with 87-3-107. Section 87-3-101 prohibits the use of snares to take or kill game while section 87-3-107 makes the use of snares lawful under certain conditions. The two statutes do not refer to one another thus are confusing and unclear. The proposed amendment excepts game animals and game birds as provided in 87-3-101 from any lawful use of snares under 87-3-107(1).

- Also amends the statute by making baiting, as defined in section 4(2) of the bill, unlawful. The language "other device to entrap or entice game animals or game birds" was unclear and difficult to enforce. The statute now does not clearly show what is prohibited.

Section 26: 87-3-104 - These amendments were made by Legislative Council due to definition changes.

EXHIBIT 1A
DATE 1-31-95
SB 210

Section 27: Wildlife Decoy

- The change in subsection (2) clarifies that the same violation should be charged in a decoy violation as if the decoy were an animal. For example, it is not an "unlawful taking" if a person shoots at a decoy from a public road. The violation is "shooting from a public road." The use of "unlawful taking" was confusing and needs clarification.

- This section is also proposed to be amended to provide restitution of $50 per violation. The money collected will be used to repair or replace decoys damaged or destroyed by violators. The department feels $50 per violation is reasonable and will enable the department to repair and replace decoys that now cost approximately $400 to $1200 each, depending on the animal and the electronic equipment installed. Construction uses 15 to 33 hours of labor which is difficult for the wardens to provide, especially during the hunting season. Cost estimates from private taxidermists to provide decoys, ranged from $855 to $2205.

Section 28: Felony sale or possession

- Adds a potential felony offense of sale of wildlife or those wildlife parts prohibited from sale under current law and valued at over $1000. This change does not affect any sale of parts allowed under 87-3-111 (heads, hides or mounts). Subsection (1) currently makes the sale of unlawfully taken wildlife a felony, regardless of its value. The new subsection (3) makes the sale of lawfully or unlawfully acquired wildlife meat, organs, tissue or fluids a felony if the value of the wildlife exceeds $1000 or if the meat exceeds 150 pounds. The 150 pounds is based on the average amount of processed meat in deer and elk. A buck deer averages 40 pounds of meat (58 pounds with bone), and a bull elk averages 172 pounds (216 pounds with bone).

- Also makes the transportation of wildlife valued over $1000 to another state for the purpose of selling a violation. Currently it is possible for a person to take animals lawfully killed in Montana to another state where the sale of such animals is not prohibited (such as Idaho and Wyoming). A person could have killed a bear lawfully and be "given" another bear by a friend and take the gall bladders and paws to Idaho for sale. They would then avoid Montana's prohibition against selling wildlife but increase abuse of wildlife.

- New subsection (4) would allow the department to add together the value of wildlife collected within a 45-day period. Under current law, a person may avoid a felony violation by transporting or possessing unlawfully killed wildlife one at

a time. It is not clear under present law whether like violations can be lumped. A person commercializing in wildlife generally does so over periods of time. This change would allow the department to charge serious violators by cumulating the violations within a 45-day period.

Sections 29 through 30: These amendments were made by Legislative Council due to definition changes.

Section 31: 87-3-402 - Substitutes "commission" for "department" because the commission sets seasons.

- Also makes changes due to definition changes.

Section 32: Season for fur-bearing animals

- The bill deletes the individual listing of protected species under 87-3-501 because the list omitted bobcats, wolverines and swift fox and substitutes "fur-bearing animals" which are defined in 87-2-101. The omissions appear to have been unintentional.

- The other changes are made as a result of the definition changes.

Sections 33 through 34: These amendments were made by Legislative Council due to definition changes.

SENATE FISH AND GAME
EXHIBIT NO. 2
DATE 1/31/95
BILL NO. SB 210

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0210, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising and clarifying the law regarding violations of fish and game criminal statutes and residency requirements; revising definitions; revising penalties; allowing former game wardens to be appointed ad ex-officio wardens; creating the offense of unlawful possession of a hunting license or permit of another; and creating the felony offense of sale of wildlife or wildlife parts.

ASSUMPTIONS:
1. Based on a Wisconsin study, the Department of Fish, Wildlife and Parks (FWP) estimates that violations will decrease by 25% when penalties are increased.
2. Fines for misdemeanors increase from not less than $50 or more than $500 to not less than $100 or more than $1,000.
3. Approximately 265 individuals annually are fined the minimum by Justices of the Peace. A 25% reduction would result in approximately 200 violators paying the revised $100 minimum fine. Fine revenue will increase from $13,250 to $20,000.
4. Approximately 60 individuals annually are fined the $500 maximum. In theory, 25% of the 60 or 15 individuals will be deterred from committing a misdemeanor. Approximately half or 23 of the 45 violators will be fined the $1,000 maximum and 22 will be fined $500. Fine revenue will increase from $30,000 to $33,000.
5. In accordance with 3-10-601, MCA, fines, penalties, forfeitures, and fees collected by Justices of the Peace are distributed 50% to county general fund and 50% to state treasure. The state treasurer distributes the funds as follows:
   - 27.88% to the state general fund
   - 09.09% to the Department of Fish, Wildlife and Parks
   - 11.76% to the Department of Transportation
   - 33.86% to the Highway Traffic Safety Division, Department of Justice
   - 00.57% to the Department of Livestock
   - 15.90% to the Department of Justice, Crime Victims Unit
   - 00.94% to the Department of Family Services
5. Restitution for illegal killing or possession of certain wildlife will increase. Based on historic information, it will increase by $1,500 per year. FWP receives 100% of the restitutions.

(continued on page 2)

Dave Lewis 1-27-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Al Bishop
AL BISHOP, PRIMARY SPONSOR DATE

Fiscal Note for SB0210, as introduced
SB 210

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Revenues:		
Fines:		
County General Fund	5,375	5,375
State General Fund	1,499	1,499
Department of Transportation	632	632
Highway Traffic Safety	1,820	1,820
Department of Livestock	31	31
Department of Family Services	50	50
Department of Fish, Wildlife & Parks	488	488
Crime Victims	855	855
Total	10,750	10,750
Restitution:		
Department of Fish, Wildlife & Parks	1,500	1,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Increase of fine revenue to the counties.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Serve as a deterrent and help stem the unlawful abuse of wildlife in Montana.

DATE 1/31/95

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: SB 210

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSOCIATION OF MT.	210	X	
Beate Galda	FWP	210	X	
Bob Winfield	FWP	210	X	
David Brown	Montana Bowhunters Ass	210	X	
Bill Holdorf	SKYLINE SPORTSMEN	210	✓	
[redacted] Janet Ellis	MT Audubon	210	X	
Jean S. Johnson	MT Dept. of Fish & Game	210	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

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MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 7, 1995, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 259, HB 285
Executive Action: SB 210

{Tape: 1; Side: A & B;}

HEARING ON SB 259

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD# 16, BOZEMAN, told the committee that SB 259 was a very simple bill allowing the use of an atlatl for a special two-day deer hunting season preceding the special archery season.

by the week, or by the hunt.

There was no opposition to this bill in the House. Labor was there and didn't oppose it.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR CRIPPEN commented that he had worked in an outfitter camp and never thought of anyone being paid overtime.

Closing by Sponsor:

REPRESENTATIVE LARSON said some fishing guides keep a party out until they catch a fish. These people are seasonal and their working day goes from daybreak to sunset. They rely on tips for a big part of their compensation.

EXECUTIVE ACTION ON HB 285

Motion: SENATOR BOB PIPINICH, SD #29, MISSOULA, MOVED HB 285 BE CONCURRED IN.

Vote: THE MOTION TO CONCUR IN HB 285 PASSED UNANIMOUSLY. **SENATOR CRISMORE** offered to carry the bill.

EXECUTIVE ACTION ON SB 210

SENATOR MESAROS said DFWP furnished some amendments to SB 210. **ANDREA MERRILL, Legislative Council Staff,** commented that she hadn't changed the DFWP amendments, but had added applicable sections of law.

Motion: SENATOR BISHOP MOVED THE AMENDMENTS.

Discussion: BOB LANE, DFWP, Chief Legal Counsel, explained the department's proposed amendments **(EXHIBIT #5)** as intended to clarify the bill.

SENATOR CRIPPEN asked if a fisherman can carry his spouse's license. **Mr. Lane** responded that anyone can carry a spouse's license or that of minor children.

Motion/Vote: THE MOTION TO PASS THE AMENDMENTS TO SB 210 CARRIED UNANIMOUSLY. SENATOR BISHOP MOVED THE BILL AS AMENDED.

Vote: THE MOTION TO PASS SB 210 AS AMENDED CARRIED UNANIMOUSLY.

INFORMATION ON REQUEST FOR COMMITTEE BILL

CHAIRMAN MESAROS said **Pat Graham, DFWP,** had responded to the

committee's concerns on Walleyes Unlimited's request for a committee bill naming the walleye a native species in Montana **(EXHIBIT #6)**. **Mr. Graham** stated that he didn't believe a committee bill was necessary for this matter.

SENATOR MESAROS asked if the committee would like to proceed with a committee bill as requested and the consensus was that such a bill was unnecessary.

INFORMATION FROM SENATOR MILLER

SENATOR MESAROS said **SENATOR MILLER** also had a request for a bill.

SENATOR MILLER told the committee he had talked to **Mr. Lane** and other DFWP personnel about a problem meat processors are having with customers who bring in game animals and don't pick up the finished product. The meat processors have incurred costs and can't sell the meat.

The requested bill would release these meat products to DFWP for auction with any proceeds going first toward the processing bill and the remainder to DFWP. He said the department wanted to make a few adjustments to the suggested bill.

SENATOR SPRAGUE said programs exist to dispose of this meat and asked whether or not this legislation was really needed. **SENATOR MILLER** said the existing programs don't give any money back to the meat processor.

BOB WINFIELD, Chief of Enforcement Operations, DFWP, commented that it is illegal to sell game meat, but under the program **SENATOR SPRAGUE** mentioned, a meat processor can deduct his costs from his income tax if he is not paid for his services.

Under the bill being proposed, the department would sell this meat at a regular game sale. The bill would provide that the processor notify the owner of the meat by certified letter. After 30 days the meat processor would contact DFWP regional headquarters with the name of the person who did not respond and the department would issue a citation for abandoning a game carcass. The resulting penalty would reimburse the meat processor's costs.

SENATOR SPRAGUE asked if a fiscal note had been prepared. **SENATOR MILLER** replied that he didn't think so.

MR. WINFIELD said the bill wouldn't entail much extra work - probably only one or two more sales.

CHAIRMAN MESAROS asked if there would be time to get a bill out and acted upon.

MS. MERRILL responded that the revenue in the bill might allow it

to go through with the money bills.

SENATOR CRIPPEN asked if committee bills have another date.

SENATOR JUDY JACOBSON, SD #18, BUTTE, said it would be preferable to go with a committee bill. **Ms. Merrill** asked the committee to remember it takes a three-fourths majority to vote on these bills. **SENATOR JACOBSON** said if **SENATOR MILLER** went to the Speaker and asked if he would accept the bill as a revenue bill and the Speaker agrees it would be fine.

SENATOR MESAROS asked **SENATOR MILLER** if he would be able to do that and **SENATOR MILLER** said he would.

SENATOR MILLER MOVED A REVENUE COMMITTEE BILL BE PREPARED ON SAID ISSUE AND THE MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:35 p.m.

KEN MESAROS, Chairman

SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 2/07/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN			
WILLIAM CRISMORE	X		
JOHN HERTEL	X		
KEN MILLER	X		
MIKE SPRAGUE			
GARY FORRESTER	X		
JUDY JACOBSON	X		
TERRY KLAMPE	X	X late	
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

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SENATE STANDING COMMITTEE REPORT

February 7, 1995

MR. PRESIDENT:
We, your committee on Fish and Game having had under consideration SB 210 (first reading copy -- white), respectfully report that SB 210 be amended as follows and as so amended do pass.

Signed: _____
Senator Ken Mesaros, Chair

That such amendments read:

1. Title, line 12.
Following: "87-3-104,"
Insert: "87-3-107,"

2. Page 12, line 1.
Following: "valid"
Insert: "and unused"

3. Page 12, line 12.
Following: "licenses"
Insert: "that are"
Following: "persons"
Insert: "and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued"

4. Page 20, line 19.
Following: "in"
Strike: "87-3-107(1)"
Insert: "87-3-127 and 87-3-128"

5. Page 20, line 28.
Following: line 27
Insert: "**Section 27.** Section 87-3-107, MCA, is amended to read:
"**87-3-107. Use of snare lawful under certain conditions.** (1) It ~~shall be~~ is lawful to use a snare trap for the purpose of snaring ~~any animal or bird~~ a fur-bearing animal, a predatory animal, or a nongame species under the following conditions:
(a) ~~Each~~ A snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.
(b) It is unlawful to set snare traps on private property without the landowner's consent.
(c) Snare traps ~~shall~~ must be set in a manner and at a time so as not to unduly endanger livestock.
(d) A person who injures livestock in snare traps is liable

Amd. Coord.
Sec. of Senate

59

for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section.""

Renumber: subsequent sections

-END-

SENATE FISH AND GAME
EXHIBIT NO. 5
DATE 2/07/95
BILL NO. SB 210

Amendments to Senate Bill No. 210
First Reading Copy

For the Committee on Fish and Game

Prepared by Fish, Wildlife & Parks
February 1, 1995

1. Page 12, line 1.
Following: "valid"
Insert: "and unused"

2. Page 12, line 12.
Following: "persons"
Insert: "that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued"

3. Page 20, line 19.
Following: "in"
Strike: "87-3-107(1)"
Insert: "87-3-127 and 87-3-128"

4. Page 20.
Following: line 27
Insert: "**Section 27.** Section 87-3-107, MCA, is amended to read:

"**87-3-107. Use of snare lawful under certain conditions.** (1) It shall be lawful to use a snare trap for the purpose of snaring any ~~animal or bird~~ fur-bearing animals, predatory animals or nongame wildlife under the following conditions: ...."

Renumber: subsequent sections

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on February 28, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)
Rep. Emily Swanson, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Bill Tash (R)
Rep. Jack Wells (R)

Members Excused: Rep. Brad Molnar (R)

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 210, SB 259, SB 269
Executive Action: SB 269 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 000; Comments: N/A.}

HEARING ON SB 210

Opening Statement by Sponsor:

SEN. AL BISHOP, Senate District 9, Billings, introduced SB 210 at the request of the Department of Fish, Wildlife, and Parks. He said the purpose of the bill was to make enforcement laws more effective and fair. Wildlife has become big business in Montana. People come from all over the world to observe wildlife as well as to hunt them.

Proponents' Testimony:

Pat Graham, Director, Department of Fish, Wildlife, and Parks, distributed written testimony and a section-by-section analysis of SB 210. This bill amended various criminal statutes relating to hunting, fishing, and trapping. Many definitions were provided in the bill to help with enforcement of statutes and prosecution of violations. Fines were increased for many violations to provide a greater deterrent. Proposals have been made to standardize the methods used to enforce revocation of hunting or fishing privileges. Restitution values for certain species have been increased. The bill allowed FWP to appoint retired game wardens as ex officio officers during times when extra enforcement was needed. Residency statutes were revised through more clearly defined criteria. The information required to apply for a resident license has been updated to include an actual street address of the applicant because FWP has had problems with nonresidents obtaining a local post-office box and then applying for a resident license. Language was added regarding the requirement of possessing a valid license while in the act of hunting or fishing. The tagging statute was updated along with regulations regarding harvesting of game animals. The sale of game over $1,000 in value has been changed from a misdemeanor to a felony. Many serious violators investigated by FWP commit violations over a long period of time. The revised language would enable FWP to address serious violators by grouping violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted. The statute regarding fur-bearing animals was also updated. **EXHIBITS 1 AND 2**

REP. BILL WISEMAN, House District 41, Great Falls, asked for favorable consideration of SB 210. However, he asked the committee to examine Section 6 carefully. Perhaps the concerns regarding military personnel residency could be taken care of through amendments.

Beth Baker, Department of Justice, said that they experienced many problems with the current law, particularly regarding tags attached to harvested game animals. Some of the proposed changes

were the result of their recommendations. She stated that SB 210 represented good clarification of current statutes.

Janet Ellis, Montana Audubon Legislative Fund, expressed their support for the bill because it represented good management of potentially endangered species. She believed it was desirable to be proactive on these issues.

Dave Brown, Montana Bowhunters, said that they reviewed the revisions and supported the legislation.

Vicki Frasier, Deputy County Attorney, stated that the most difficult laws to prosecute were the fish and game statutes. She spoke in favor of the changes. With the increasing number of people coming to recreate in Montana, it has been difficult in court cases to establish residency. SB 210 was a positive step toward a resolution of the difficult cases that go through the court system. The proposed language tightened up current statute loopholes. She expressed strong support for the bill.

Brett Noltie, citizen, said he has been a Montana resident all his life. He expressed concern over the proposed language regarding residency. If he was stationed out of state, he would be considered a resident for taxes and other responsibilities. However, he would not be considered a resident for the application of fish and game licenses.

Opponents' Testimony:

CHAIRMAN DOUG WAGNER handed out a copy of a letter from **J.A. Brouelette, citizen,** opposing SB 210. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Lost 5 seconds.}

Questions From Committee Members and Responses:

REP. PAUL SLITER gave the scenario of a friend wounding an animal and him having an opportunity to finish the kill. He asked if the friend could not place his tag on the animal because he finished the kill under this bill. **Mr. Graham** said that would be a field interpretation and up to the discretion of the game warden. He referred the question to **Beate Galda, Enforcement Division, Department of FWP. Ms. Galda** said the person who killed the animal would be the only person legally entitled to tag the animal. **REP. SLITER** mentioned the case of an outfitter that was with a "greenhorn hunter" who wounded the animal but did not make the kill. He asked if the outfitter was to let animal take off into the brush and not finish the kill even though the outfitter had the opportunity. The outfitter may be compelled to let the animal go because the client was the only one who had the tag. **Ms. Galda** spoke about the intent. However, there was a lot of background noise, and it was not recorded into the minutes or on tape. She also stated that it was not currently legal and

would not be under the proposed language in SB 210. However, she believed that the situation arose occasionally.

REP. BOB PAVLOVICH asked **Vicki Frasier** if she had specific amendments to Section 11 and 21. **Ms. Frasier** explained that she had come the hearing to testify in favor of the bill, specifically Sections 11 and 21, which were recommended by her office.

REP. JACK WELLS asked **Mr. Graham** if he knew how many ex officio wardens would be utilized during hunting seasons. **Mr. Graham** said FWP currently had the authority to contract with retired game wardens during peak work seasons. About five ex officio wardens were utilized per year to complement the existing game wardens. **REP. WELLS** asked **Ms. Galda** about addressing the concern presented about military personnel's residency in Montana. He suggested a possible amendment on page 8, Section 3, to take care of those concerns. **Ms. Galda** believed there was a possibility of adding the necessary language. They have had problems with people stationed elsewhere and claiming Montana as their state of residency on license applications.

REP. MARIAN HANSON asked **Mr. Graham** about the changes in requiring "address of permanent residence." She asked if her permanent address would be the legal description of where her home was located. **Mr. Graham** referred the question to **Ms. Galda**. **Ms. Galda** said it would suffice to put a highway, ranch, or road on the application, so as long as there was some indication of where the physical residence was located.

REP. BOB REAM referred to page 8, line 8, where it indicated that a person must live in Montana at least 120 days per year. He asked **Mr. Graham** why it was not 180 days, which would make it the same as the regular residency requirements. **Mr. Graham** said there was a lot of discussion over people who go south for the winter and return to Montana who were still considered residents. It was the best number considering all people who regard Montana as their place of residence. However, it excluded people who might come for the summer and do not intend to reside in Montana. The 120 days seemed to be a balance for Montana residents and would provide a deterrent for nonresidents.

REP. REAM asked **Brent Noltie** about the problems had regarding military personnel's residency for Montana game licenses. **Mr. Noltie** said the bill referred to one's home or primary place of abode being in Montana. If he was transferred to Washington, under this law, he would not be considered a resident despite the fact that he continued to pay taxes and registered his vehicle in Montana. **REP. REAM** asked **Ms. Galda** about the residency requirements. **Ms. Galda** said that the way the bill was written she did not believe a person would still be considered a resident. If a person had left their family and was stationed for a short time elsewhere, that person would still be considered a resident. An amendment could be made to clarify this point.

REP. REAM said that subsections (1)(a) and (1)(b) gave people who were stationed in Montana "a break" by only requiring that they be in the state 30 days to be considered a resident. If a person was transferred from Montana, that person was considered a nonresident. **Ms. Galda** said he was correct.

REP. REAM asked **REP. WISEMAN** if the issue had been clarified. **REP. WISEMAN** said the problem existed that even if a military personnel's record showed that Montana was the "home of record," when that person was transferred out of state they were considered a nonresident. He believed this was wrong and asked the committee to address the issue.

REP. BILL TASH asked **Mr. Graham** if the ex officio wardens spoke of in Section 3 would require peace officer training. **Mr. Graham** said they would not. It costs a person time and money to maintain a peace officer status after retirement. A former game warden could not become ex officio unless his current license was active. They have to maintain the license in order to be appointed.

REP. TASH asked **Mr. Graham** what would be the extent of an ex officio warden's authority. **Mr. Graham** said their authority was more restricted. However, it provided additional manpower and experience in the field. **REP. TASH** stated that they would have no authority to arrest a violator of the law. **Mr. Graham** said ex officio wardens had the same power as regular game wardens to enforce fish and game laws. However, they do not perform additional duties. Their primary role was to assist other game wardens. They do not have a general peace officer status as a law enforcement officer.

REP. CHARLES DEVANEY asked **Mr. Graham** if ex officio wardens were paid on a contractual basis. **Mr. Graham** explained that ex officio wardens could enter into contracts, which would include a specific time period, duties, and amount of money.

CHAIRMAN WAGNER referred to the restitution for catching a bull trout over 18 inches long. He asked **Mr. Graham** what would happen if a bull trout over the limit was caught by accident. He wanted to know if it should be released to take its chances. **Mr. Graham** said yes. In areas where species were being protected, a certain amount of loss was planned for.

<u>Closing by Sponsor</u>:

REP. BISHOP said many of the changes proposed in the bill were suggested by the county attorney. He stated that Montana's valuable resources must be protected. Because of the recent increase in the desire for animal parts, wildlife must be protected.

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL DATE February 28, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar			✓
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash	✓		
Rep. Jack Wells	✓		

EXHIBIT 1
DATE FEB 28, 1995
SB 210

TSB210.HP

Senate Bill No. 210
February 28, 1995
Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the House Fish and Game Committee

This bill amends various criminal statutes relating to hunting, fishing and trapping. In addition, section 4 both amends and adds definitions of the terms "hunting," "angling," "trapping," and "baiting" to clarify what actions are prohibited by law. These clarifications will help with the enforcement of statutes and the prosecution of violations.

Many of the amended sections are included in this bill only to incorporate the revised definitions within existing law. Those sections that simply incorporate the new definitions are listed in the summary we've passed out. (Sections numbered 7, 12, 13, 15-20, 22-24, 26, 30, 31, 32, 34, and 35.)

I will explain the substantive changes to the criminal law which are also discussed in the section-by-section summary provided for your reference. Section 1 of the bill proposes to amend the penalty section (87-1-102). The addition of the term "negligently" to "purposely or knowingly" prevents use of the frequently attempted defense of "I can't be guilty because I didn't know." It places a reasonable requirement of responsibility on the sportsperson to know the laws before participating in hunting, fishing, or trapping.

Proposed changes to the fines category of the penalty section raise the minimum fines from $50 to $100 and some of the maximum fines from $1,000 to $2,000. This will provide a greater deterrent. The minimum fine has been $50 since 1977. A court could impose a $50 fine (plus $15 in court costs) on a nonresident who failed to buy a $40 fishing license. The small size of the fine and slight risk of getting caught does not deter violators. In addition, increasing the maximum fine will better enable the courts to address the more serious misdemeanor offenders. The court retains its discretion to set the fine at whatever dollar amount it considers appropriate within the minimum and maximum amounts set by the statute. Maximum amounts are rarely imposed but can be used for serious or repeated violations.

The bill also proposes to increase the fine for the illegal taking of black bears. We feel the deterrent effect of raising the fine from the $300-$1,000 range, to the $500-$2,000 level will help address growing illegal commercialization problems with black bears and the Asiatic market.

The changes dealing with loss of privileges do not affect the ter of suspension, but merely clarify the relationship of the court anc the Department to assure a consistent statewide imposition of suspensions. Some courts now notify individuals of the loss of privileges while others believe the Department is responsible. This proposal will standardize the method by requiring the Department to notify the convicted violators and collect any licenses forfeited under this statute. Since revocations are mandatory for some violations, everyone forfeiting bond or found guilty of a violation that mandates loss of privileges will in fact lose them and be so notified.

Section 2 amendments increase the restitution values of black bear, adult bull trout and river dwelling grayling. There is a very lucrative market for black bear parts including claws, teeth, paws and, most notably, gall bladders. We are proposing to raise black bear restitution from $500 to $1,000 per bear, enabling prosecutors to file a felony charge with two, rather than three, unlawful takings or sales of bears.

Bull trout and river dwelling grayling are species of special concern to Montana. Deterring unlawful harvest or commercialization of these fish species is essential to the state's management of these populations. Both species are under consideration by the U.S. Fish and Wildlife Service for listing as threatened species. Bull trout restitution is currently $10 per fish and all grayling are $100 per fish. We are requesting that restitution for bull trout over 18 inches long be raised to $500 per fish. This is necessary to protect adult spawners. Similarly we feel it is necessary to protect river dwelling grayling by raising restitution to $300 per fish. This change will not apply to lake dwelling grayling, as their populations are not in danger, and the restitution for them will be lowered to the standard $10 per fish.

Section 3 allows the director to appoint retired game wardens as ex officio officers. Many of these individuals have let their peace officer certification lapse since retirement. We would like to continue to be able to contract with them as needed for help during the hunting season. Their peace officer status allowed them to enforce Fish, Wildlife and Parks laws and regulations, but without this status they need ex officio authority.

Section 4, as mentioned, contains the definitions for angling, baiting, hunting and trapping. The changes are discussed beginning on page 3 of the handout. The major change is the addition of a definition for baiting which includes the use of foodstuffs or odors used to attract game animals. It will not affect the use of unscented decoys or the use of scents used to mask human odors.

Angling is redefined to include any method of fishing since many methods are used. A defense under present law is "I wasn't fishing

since I wasn't using a line, hook or rod." As a result of defining hunting many of the statutes in the bill could be simplified and streamlined. By defining trapping, we will be able to enforce individual quotas and prevent trapping by unlicensed persons.

Section 5 is a new section but the oldest law on fishing. The law became part of the definitions when in fact it should have been restricting fishing to the use of hook or single line, unless other means have been approved by the commission. Instead the definition limited what would be considered fishing. Other methods of obtaining fish were not specifically prohibited. This section will clarify lawful methods of fishing and simplify prosecutions.

Section 6 revises the residency statutes. As the desirability of hunting and fishing in Montana increases each year, our problems with persons purchasing resident licenses unlawfully also increase. County prosecutors have become frustrated with their increasing workload and the difficulties encountered prosecuting these cases. To remedy these problems we have more clearly defined the criteria needed to purchase resident hunting and fishing licenses in Montana. A person will have to physically live in Montana for 180 consecutive days and meet existing criteria before applying for a resident license. They must then physically live in Montana for 120 days per year to maintain that residency.

There is an exception for students from Montana under 24 years of age who are studying out of state. The residency status of persons in the armed forces is limited to persons stationed and on active duty in Montana. Reassignment to another state ends their residency status. Persons entering the military from Montana, however, will continue to be able to maintain their residency.

These amendments to the statute will enable prosecutors to spend far less time preparing these cases and be able to prosecute based on objective requirements.

Section 8 changes the information required to apply for resident licenses by requiring the person's actual street address. We have problems with nonresidents obtaining a local post office box then applying for resident licenses. This makes it more difficult to identify these individuals as nonresidents for licensing purposes.

Section 9 amends the statute on carrying and exhibiting a license by clarifying that licenses must be carried when sportspersons are in the field. The amendment does, however, allow a person to be carrying the license of their spouse or any minor children when in the field.

Section 10 is a new section dealing with possessing or carrying licenses in the field. In many of our undercover investigations, unfilled licenses were left with the hunting camp or outfitter and were later filled by others or used to cover illegally taken animals to be transported. This has become a very serious problem and it is difficult for wardens to identify illegally taken animals. This section would prohibit the practice of having or

controlling licenses of people other than spouse or minor children. The section was amended in the Senate to clarify that only unused licenses, those where the date of harvest has not been cut out, are included.

In addition, commercial offenders such as outfitters, guides, and meat processors could be charged with a felony if they control more than three licenses used or intended to be used on game animals not taken by the persons to whom the licenses were issued. Fewer than three licenses would be a misdemeanor offense. Examples of problems we've encountered are found in the handout on page 5.

Section 11 changes the tagging statute. Prosecutors have difficulty under the present language of the statute with cases in which an actual, physical transfer of the license from person to person does not take place. For instance, when an animal is taken by one person but tagged by another, wardens have had problems using this statute as a lesser offense to illegal taking, a harsher penalty. Persons convicted of illegal taking lose their hunting privileges.

Section 21 requires that game animals must be tagged with tags valid in the specified district. This seems obvious but is not clear from the law and was recently raised as a defense by a violator who chose to save the proper tag hoping to find a buck and used the tag valid only in another area on the doe which he shot.

Another amendment to the section clarifies that legal ownership of game does not change to the hunter unless the animal is lawfully taken and tagged. This avoids forfeiture problems with confiscating unlawfully taken game from violators.

Section 25 restricts the manner in which game may be harvested and forbids taking game by the use of a snare. To clarify when a snare may be used, this section was amended in the Senate to exclude sections 87-3-127 and 87-3-128, which allow the taking of stock killing animals and taking of animals by Department personnel performing their duties for the Department. This section also makes baiting, as defined, illegal. The present law is unclear since there is no definition of "other device to entrap or entice game animals or game birds."

Section 27 was added in the Senate to clarify that snares may be used only to capture fur-bearing animals, predatory animals, or nongame animals. Section 87-3-107 currently provides that any animal or bird may be taken by a snare if certain conditions are followed. This was not consistent with Section 87-3-101.

Section 28 clarifies the violation to be cited when charging an individual who has shot a wildlife decoy. It has been unclear if wardens should charge a violator using the unlawful taking statute that pertained to decoys even if the violation would have been a

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lesser charge if the violator had been shooting at an actual animal. For example, if the violator was shooting from a public road at the decoy, and this was the only violation that occurred, it is not appropriate to charge the individual with unlawful taking of the wildlife decoy. If the decoy had been a live animal, the only charge would have been shooting from the roadway, a lesser offense.

This section also provides a restitution charge of $50 per violation of the decoy statute. This money will be used to repair decoys shot by violators and is estimated by the Department based on the average amount needed to cover expenses.

Section 29 amends the felony section to include sale of game of over $1,000 in value and includes meat, organs, tissue, or fluids. Under existing law an individual can sell huge quantities of meat or other animal parts and risk only a misdemeanor fine. This change does not prohibit already lawful sales of heads, antlers, hides or mounts.

We have added a poundage limit to address quantities of processed meat. Many of our investigations deal with game that has already been processed, making it difficult to determine the number of animals represented. A buck deer averages 40 pounds of meat, a bull elk averages 172 pounds of meat (without bones). The proposed 150 pounds of meat would be equal to four buck deer or just over one bull elk. A lesser quantity would continue to be a misdemeanor violation, and the county attorney always has the discretion to charge the violator with a misdemeanor rather than a felony.

Another problem we have encountered is a number of individuals transporting game animal parts which are unlawful to sell in Montana to another state where they can be legally sold. This totally eliminates the effectiveness of our statutes and puts our wildlife in jeopardy of increased commercialization. Both Idaho and Wyoming allows sales prohibited under Montana law. We propose to make it unlawful to transport wildlife valued at over $1,000 out of state for the purpose of selling it. Particular problems have involved bighorn sheep and black bear parts.

Many of the serious violators we investigate commit violations over a long period of time. Under present law, it is unclear if the violations can be grouped together for felony prosecution.
The proposed amendment will enable us to address serious violators by grouping violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted.

Section 33 amends the closed season statute for furbearing animals (87-3-501). This statute inadvertently omitted bobcats, wolverines and northern swift fox from the closed season statute. This amendment refers to furbearing animals which are defined in 87-1-101 (section 4 of the bill).

Revised 2-2

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SENATE BILL 210

ENFORCEMENT REVISION BILL

SUMMARY OF CHANGES - BY SECTIONS

Section 1: Amends general penalty statute for fish and game violations.

- The addition of "negligently" was at the request of prosecutors. This addition places the reasonable responsibility of knowing the rules and regulations on the sportsmen and women, before they participate in their chosen activity. For the prosecutor, this negates the defense of "I can't be guilty, I didn't know."

- Raises minimum fines from $50 to $100. These values are more in line with today's penalties, as this category has not been changed since 1977. The increase is expected to work as a deterrent, especially where the cost of a license is similar to the fine for failing to have one.

- The maximum fine for flagrant violations would be increased from $1000 to $2000. Offenses would, for the most part, be filed in justice court, however justice and district court have concurrent jurisdiction for misdemeanors over $1000. (3-10-303,MCA.)

- Amends subsection (2)(b) to insure that there is only one penalty for waste of game animals. The specific statute on waste of game, 87-3-102(3)(b), provides for a $50 to $1,000 fine and/or six months penalty, which is less than what is in subsection (2)(b).

- Elevates black bears to the higher category of fines under subsection (2)(a) (from fines of $300 to $1000 to fines of $500 to $2000). (Recommended because of the high commercial value of black bears and the increased poaching problem).

- Deletes subsection (d) of section (2). This section has been clarified and is contained the general penalty section. This allows the court discretion to suspend any or all license privileges.

- The other additions to the statute require the department to give notice of loss of privileges and to receive surrendered licenses. This clarifies the relationship of the court and the department with respect to forfeiture and notification of loss of privileges. This will assure notification of the violators if their license privileges are suspended, and for how long. Previously the department's only authority was in 87-1-108, MCA (under which it could suspend privileges for non compliance with a citation or sentence).

Privilege suspensions are mandatory for some violations, as are minimum lengths of suspension, when there is a conviction or forfeiture. This will insure a consistent method of application statewide, while retaining the court's discretion to impose loss of privileges.

With this system in place, we will avoid the situations where a violator was not notified of loss of privileges, purchased a license or licenses, then is required to return the licenses for a refund, as per the court's order. This may be a substantial inconvenience if plans and preparations for a hunting or fishing trip have been made.

The change proposed for this statute will improve the department's ability to comply with the responsibilities under the wildlife violator compact, if Montana becomes a member state through proposed legislation.

Section 2: Makes changes in restitution amounts.

- Increases black bear restitution from $500 to $1000 per bear. The intent of this revision is to curb the illegal traffic in black bear parts. Increasing restitution values allows prosecutors to file felony rather than misdemeanor charges with two unlawful takings or sales, rather than the current three.

- Increases restitution on bull trout. Currently restitution for illegal bull trout is $10 per fish. Bull trout are a species of special concern to Montana. To deter illegal harvest and commercialization of bull trout we propose restitution at $500 per fish over 18 inches long. This provides the capability of felony prosecution if three fish over 18 inches long are taken.

- River dwelling grayling have also been proposed for an increase in restitution from $100 to $300 because of their status. The taking of four river dwelling grayling could lead to a felony charge. Lake grayling are not in need of special protection and the restitution is lowered from $100 to $10 per lake grayling.

Section 3: Adds retired game wardens to possible ex officio status

- Retired game wardens are being added to the list of persons the director may appoint as ex officio wardens. The department has the authority to contract with retired game wardens as needed. Not all retired game wardens are eligible to be ex officio under this statute. If their POST certification has lapsed, this change would still allow them to be appointed by the director and would clarify their

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authority.

Section 4: Amends and adds definitions.

- Amends the definition of "angling" or "fishing" by omitting the "by hook and single line or single rod, in hand or within immediate control." Fishermen use a variety of methods to take fish, including spears, gigs, nets, bows and arrows, set lines and snagging. This proposal will enable prosecutors to avoid the defense "how could my client have been fishing, he wasn't using a line, hook or rod?"

- The definition of baiting is necessary for the enforcement of 87-3-101 (section 25 of this bill). By adding "bait" to 87-3-101 and a definition of bait in the definition section, the law will more clearly prohibit the use of foodstuffs or odors to attract game animals. Present law prohibits salt licks and other devices. The argument can be made that food or odors are not a "device." This will help greatly to successfully prosecute unethical hunters and outfitters who place salt blocks, scents, food stuffs or other attractants near their stands to attract game animals. The proposed changes will not affect the use of unscented decoys or replicas of wildlife currently legally used or the use of masking scents.

- Hunt is defined. With an encompassing definition of hunting our statutes are streamlined and understandable, enabling the courts to determine if a violation has been committed. This definition may enable the game warden to act before an animal is unlawfully harvested, if he observes someone shooting at a game animal for example. The law still requires proof of intent to take the animal.

- Trapping is defined to make it possible to enforce individual quotas. Under current law, anyone can work a trapline, regardless if they have reached their personal quota. The traps must give a name and address, but several people can be listed on the trap, and anyone may work the trapline so long as the owner of the trap does not complain. In one case in Central Montana, seven people were regularly working a trapline. Only one had purchased a trapping license. The county attorney advised against citing the unlicensed persons under the current law.

Section 5: Adds a new section restricting fishing to by hook or single line or single rod unless other means have been approved by the commission. Under current law there is no clear prohibition since the method of fishing was only in the definition section.

Section 6: Revises residency requirements.

- The proposed changes will require a person to physically live in Montana for 180 days before applying for a license. Once residency has been established, the person must live in Montana at least 120 days per year to maintain the residency.

- A person's Montana home must be his or her principal place of residence, and all other existing criteria must be met.

- There is a student exception for students from Montana under 24 years old who are studying out-of-state.

- Residency for persons in the military is clearly limited to military personnel stationed in Montana. Reassignment to another state ends their residency status. However, under present law, persons who entered the military as Montana residents can maintain their residency in Montana.

- Prosecutors have had numerous problems prosecuting nonresidents, especially under the "fixed intention to return." It is difficult to prosecute because the defendant claims that he is a Montana resident and will return to Montana as soon as he can. He intends to live here permanently (has a "fixed intent to return"). There is no clear objective criteria under the present statute. Convictions depend on whether the jury believes or dislikes the defendant.

Section 7: The license requirement statute is simplified because of the new definitions. (This change was made by Legislative Council.)

Section 8: The section on application for a license is amended to require the actual address in addition to a post office box. We have problems with nonresidents obtaining a post office box and using it as a local address. The change would make it easier to determine a person's actual residence.

Section 9: Carrying a license - amended to conform with section 10 which permits a person to carry the license of a spouse or a minor. Also clarified to conform to the definitions and to be more easily understood.

Section 10: Unlawful possession of hunting licenses issued to another person

- Prohibits one person from possessing or having another person's unused hunting or fishing license, unless the license is their spouse's or a minor child's. Although there are

legitimate reasons for a person carrying their spouse's or a child's license while they are hunting or fishing together, there is generally no good reason to carry or control licenses belonging to others.

- Without the proposed change, the mere possession of licenses of another is not an offense. The game warden has to wait until the wildlife is killed or tagged illegally to cite them.

- Examples of abuses:

  - During undercover investigations, officers have found "extra" licenses which were used or intended to be used to cover illegally taken wildlife. One suspect had a coffee can full of licenses in his meat packing business which were used to cover untagged and illegally taken wildlife brought into his business.

  - Undercover investigators observed guides filling their neighbors' licenses and clients leaving their unfilled licenses with the outfitter for use by other clients. One suspect normally fills ten to twelve licenses for non-family members where he keeps the racks and capes and gives the license holders the meat. Another suspect offered his wife's license to an investigator under the proposal that the investigator bring them the meat but keep the rack.

  - In another case, an outfitter supplied illegally obtained resident licenses for out-of-state hunters. Another unlicensed outfitter purchased several doe licenses to supply to non-resident hunters. These were used to cover illegal taking of buck deer which had all evidence of sex removed.

  - In another case, an unlicensed outfitter promised his clients that he would supply licenses for all the wildlife they took. Seventeen hunters were prosecuted for hunting without licenses.

- Because of the significant potential for abuse of the licensing process, the department supports a felony penalty for possession by a commercial violator (outfitter, guide or meat processor) of three or more licenses used or intended to be used on game animals not taken by the persons to whom the licenses were issued. Fewer than three licenses not in the name of the violator would be a misdemeanor under the proposed bill.

Section 11: Attachment or transfer of a license.

- Under current law it is unlawful to transfer a license to

another person. This amendment would make it unlawful to attach a license to an animal shot by someone else. The action of placing a tag on another animal could also be considered unlawful possession, but such a charge would result in a much harsher penalty which may be inappropriate in some cases. This change gives a game warden the option to charge a person with a lesser offense.

Sections 12 and 13: These amendments were made by Legislative Council due to definition changes.

Section 14: Wild Turkey Tags - These amendments were made by Legislative Council due to definition changes.

- Also "department" was changed to "commission" because the commission sets the seasons, not the department.

Sections 15 through 20: These amendments were made by Legislative Council due to definition changes.

Section 21: Tagging game animals

- This statute is amended at the request of prosecutors. This change clarifies the violation when a person attaches a tag valid in one district to an animal killed in another district. In a recent case, the defendant had an A-tag license. He also had a B-tag valid in a specific area. He shot a doe and attached the B-tag. He was cited for failure to have a valid license, but he had a valid license he chose not to use. The defense counsel raised this issue. The statute would be clarified by making it an express violation under the tagging requirements.

- The amendments also clarify that legal ownership of a game animal does not change from the public to a hunter if the hunter has taken the animal unlawfully. This change avoids legal problems with forfeitures. Confiscating an unlawfully taken game animal is thus not a forfeiture because the hunter never legally possessed the animal.

Sections 22 through 24: These amendments were made by Legislative Council due to definition changes.

Section 25: General restrictions

- The proposed amendment exempts sections 87-3-127, the taking of stock killing animals, and 87-3-128, the taking of animals by department employees acting in the scope of their duties, from the prohibition of the use of snares. The amendment will clean up conflicting language in the present statutes (see

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section 27 below).

- Also amends the statute by making baiting, as defined in section 4(2) of the bill, unlawful. The language "other device to entrap or entice game animals or game birds" was unclear and difficult to enforce. The statute now does not clearly show what is prohibited.

Section 26: 87-3-104 - These amendments were made by Legislative Council due to definition changes.

Section 27: Lawful Use of Snares

- This statute is being amended because it is inconsistent with 87-3-101. Section 87-3-101 prohibits the use of snares to take or kill game while section 87-3-107 makes the use of snares lawful under certain conditions. The two statutes do not refer to one another thus are confusing and unclear. The amendment limits the lawful use of snares to fur-bearing animals, predatory animals, and nongame animals.

Section 28: Wildlife Decoy

- The change in subsection (2) clarifies that the same violation should be charged in a decoy violation as if the decoy were an animal. For example, it is not an "unlawful taking" if a person shoots at a decoy from a public road. The violation is "shooting from a public road." The use of "unlawful taking" was confusing and needs clarification.

- This section is also proposed to be amended to provide restitution of $50 per violation. The money collected will be used to repair or replace decoys damaged or destroyed by violators. The department feels $50 per violation is reasonable and will enable the department to repair and replace decoys that now cost approximately $400 to $1200 each, depending on the animal and the electronic equipment installed. Construction uses 15 to 33 hours of labor which is difficult for the wardens to provide, especially during the hunting season. Cost estimates from private taxidermists to provide decoys, ranged from $855 to $2205.

Section 29: Felony sale or possession

- Adds a potential felony offense of sale of wildlife or those wildlife parts prohibited from sale under current law and valued at over $1000. This change does not affect any sale of parts allowed under 87-3-111 (heads, hides or mounts). Subsection (1) currently makes the sale of unlawfully taken wildlife a felony, regardless of its value. The new subsection (3) makes the sale of lawfully or unlawfully

acquired wildlife meat, organs, tissue or fluids a felony if the value of the wildlife exceeds $1000 or if the meat exceeds 150 pounds. The 150 pounds is based on the average amount of processed meat in deer and elk. A buck deer averages 40 pounds of meat (58 pounds with bone), and a bull elk averages 172 pounds (216 pounds with bone).

- Also makes the transportation of wildlife valued over $1000 to another state for the purpose of selling a violation. Currently it is possible for a person to take animals lawfully killed in Montana to another state where the sale of such animals is not prohibited (such as Idaho and Wyoming). A person could have killed a bear lawfully and be "given" another bear by a friend and take the gall bladders and paws to Idaho for sale. They would then avoid Montana's prohibition against selling wildlife but increase abuse of wildlife.

- New subsection (4) would allow the department to add together the value of wildlife collected within a 45-day period. Under current law, a person may avoid a felony violation by transporting or possessing unlawfully killed wildlife one at a time. It is not clear under present law whether like violations can be lumped. A person commercializing in wildlife generally does so over periods of time. This change would allow the department to charge serious violators by cumulating the violations within a 45-day period.

Sections 30 through 31: These amendments were made by Legislative Council due to definition changes.

Section 32: 87-3-402 - Substitutes "commission" for "department" because the commission sets seasons.

- Also makes changes due to definition changes.

Section 33: Season for fur-bearing animals

- The bill deletes the individual listing of protected species under 87-3-501 because the list omitted bobcats, wolverines and swift fox and substitutes "fur-bearing animals" which are defined in 87-2-101. The omissions appear to have been unintentional.

- The other changes are made as a result of the definition changes.

Sections 34 through 35: These amendments were made by Legislative Council due to definition changes.

Q:SB210.exp

EXHIBIT 3
DATE FEB 28 1995
SB 210

January 30, 1995

HOUSE OF REPRESENTATIVES- Committee on Fish and Game

TO: Doug Wagner, Chairman

Bill Rehbein	Emily Swanson	Charles Devaney
Jim Elliott	Daniel Fuchs	Marian Hanson
Hal Harper	Chase Hibbard	Dick Knox
Rod Marshall	Brad Molnar	Bob Pavlovich
Bob Raney	Bob Ream	Paul Sliter
Bill Tash	Jack Wells	

Representatives:

I would like to address some concerns with Senate Bill No. 210 which was requested by the Department of Fish, Wildlife and Parks.

Sec. 87-1-102 and 87-1-111 There is no reason to increase penalties or move the black bear to a higher priced designation. The penalties are not enforced consistently and the department can not demonstrate that increased penalties will prevent illegal taking of game animals. Also, a warden - Dan Burns - illegally killed a spike elk and was only fined $65.00 and did not lose his hunting privileges or pay restitution for the animal. This unabashed failure to consistently enforce the penalties clearly indicates the Department of F W & P is not capable of properly handling penalties and therefore, should not be allowed to increase or modify the current law at this time.

Sec. 87-1-503 Former game wardens are just that, let's not let the general public be ex-officio wardens based on their past association with the department. Unless, of course, it can be opened up to the rest of the public to have the same powers and privileges.

Sec. 87- 2-101 Definitions of (1) "Angling or fishing" and (8) "hunt" are overly broad and probably unconstitutional. If a person were to "hunt" game animals with a camera, or just to view them, it would be illegal under this definition. There are enough problems with enforcement today without adding overly broad regulations and definitions that can be interpreted by each warden in the field.

I request that this bill be killed until there can be more public input. The department should be required to hold public hearings on this bill, since they work on the sportmen's money and are attempting to get more of it.

Thank you for your consideration.

James A. Brouelette

J. A. Brouelette
4248 Lone Rock School Road
Stevensville, MT 59870
(406) 777-3974

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME COMMITTEE DATE FEB 28, 1995

BILL NO. SB210 SPONSOR(S) BISHOP

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Beth Bakes	Dept of Justice	✓	
Brett Nolte	116 Tamarack Circle Great Falls, MT 59405		✓
Janet Ellis	MT Audubon	✓	
Vicki Frazier	City Atty	—	
Pat Graham	FWP	✓	
David Brown Montana	Montana Bowhunters Ass	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on March 9, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Brad Molnar (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Bill Tash (R)
Rep. Jack Wells (R)

Members Excused: Rep. William Rehbein, Jr. (R)
Rep. Emily Swanson (D)
Rep. Chase Hibbard (R)

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None.	
Executive Action:	HB 349	REFERRED BACK TO SUBCOMMITTEE
	SB 210	BE CONCURRED IN AS AMENDED
	SB 303	BE CONCURRED IN AS AMENDED

account. FWP would have control over the account, but a certain portion of the money would be appropriated. The reduction in the ending fund balance from now until 1999 would be due to capital improvements and inflationary costs. He distributed financial information regarding different scenarios on the ending fund balance. He also handed out a copy of proposed amendments. The amendments stated the program would be funded from unappropriated money in the ending fund balance. **EXHIBITS 2 AND 3**

EXECUTIVE ACTION ON SB 210

Motion: **REP. JACK WELLS MOVED THAT SB 210 BE CONCURRED IN.**

Discussion:

REP. WELLS handed out a copy of a proposed amendments. Military personnel transferred into the state were granted residency benefits for hunting and fishing. Some military personnel established their permanent residency in Montana. Concern was raised over Montana residents who were transferred out of state temporarily but their family remained in Montana. When those military personnel returned on leave, they were not considered residents. The proposed amendments would address this problem. **EXHIBIT 4**

Motion/Vote: **REP. WELLS MOVED THE AMENDMENT DO PASS. Motion carried unanimously.**

Discussion:

REP. DEVANEY referred to the proposed change in fines. He asked **Beate Galda, Enforcement Division, Department of Fish, Wildlife, and Parks (FWP),** if it was necessary to change the minimum fee issued for negligent violations. **Ms. Galda** said FWP proposed the increase as a deterrent and also because the fines had not been changed since 1977. Currently there were many misdemeanors that fell in the $50 to $100 range. FWP did not want to alter the proposed change.

Motion: **REP. WELLS MOVE SB 210 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. TASH asked **REP. DEVANEY** about his suggestion regarding the minimum fine. **REP. DEVANEY** said that he was only interested in returning the minimum fine to $50. He was not suggesting to change the proposed maximum fine. **REP. TASH** stated that this should still serve as a deterrent, and **Ms. Galda** agreed.

Motion: **REP. DEVANEY MOVED TO AMEND THE BILL TO RETURN $100 TO $50 AS THE MINIMUM FINE FOR MISDEMEANORS.**

Discussion:

REP. BOB REAM asked if there were other places in the bill that needed changes in the fines. **Ms. Galda** said no. Other statutes dealt with different violations. **REP. REAM** asked about the word "negligently." **Ms. Galda** said the intent was not to cover inadvertent violations. Most of those were dealt with by a warning. In a court case that involved a jury, sometimes a person was able to convince the jury that they did not know the violation was against the law. Juries have had a difficult time determining whether the act committed purposefully was done in knowing violation of the law. People are supposed to know what the laws are when they go hunting and fishing. The proposed language dealt with that situation. "Negligently" was added to create a new class of violations. **REP. REAM** commented that the language would not apply to people making honest mistakes.

Vote: REP. DEVANEY AMENDMENT. Motion carried 17 to 1 with REP. REAM voting no.

Motion: REP. DEVANEY MOVED THAT SB 210 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SLITER referred to page 8, line 21. He understood that post-secondary education referred to any school after high school. The bill only included students under the age of 24. The age of the student should not matter. **Ms. Galda** stated that this subsection was intended to deal with "kids." Most adults that go back to school normally go nine months per year and then return. **REP. SLITER** stated that a nontraditional student was more likely to go year around. **Ms. Galda** stated there had to be some criteria. Concern was raised because of part-time students. They may be working and living out-of-state. The intent was to restrict it to youth.

REP. TASH agreed with **Ms. Galda.** Some students move to another state to get resident tuition for the school in that state.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Lost 5 seconds.}

REP. SLITER asked **Mr. Sternberg** if there was a place in statute that discussed permanent address or primary residence. **Mr. Sternberg** said there were other definitions that deal with residency. For instance, there were definitions found in the tax codes. Section 87-2-102 specifically established criteria for determining residency for a student. It was a specific and unique set of criteria that FWP used to determine if a person was a Montana resident for the purpose of obtaining hunting and fishing licenses.

CHAIRMAN WAGNER referred to the opening statements made in the committee at the beginning of the session. The Fish and Game

Committee was supposed to represent the citizens of Montana, while it was FWP's duty to enforce the laws. FWP made suggestions to update the law. He believed that "by adding the word negligent the committee was opening an incredible arena for Montana citizens." He explained a situation where he had loaded up a deer into his pickup and drove away. Shortly after leaving, he realized that the deer had not been tagged. He got out, tagged it, and continued on his way. Had a game warden stopped him before he tagged the deer, he would have been negligent. This was the type of situation that concerned him. It could make a terrible future for Montana sportsmen where this type of determination was at the discretion of attorneys.

REP. BRAD MOLNAR understood **CHAIRMAN WAGNER's** concern about the standards of "knowingly or negligently" but did not follow his example. **CHAIRMAN WAGNER** said a variety of cases were opened where people go to court saying that they did not know about a particular law. The jury did their duty in believing that person was innocent and letting them off. He believed that FWP did not like that the jury sided with the accused person and were willing to have the law changed to be able to prosecute people.

Motion: **REP. SLITER MOVED TO STRIKE THE LANGUAGE "UNDER 24 YEARS OF AGE" ON PAGE 8, LINE 24.**

Discussion:

REP. WELLS understood the amendment to cover all age groups of students. **REP. SLITER** said that the proposed language was discriminatory. Throughout Section 6, subsection (4), it referred to paying taxes and primary residence. If a person was a student, the age of that student should not matter.

REP. WELLS did not have a problem with the proposed amendment. He suggested adding language to prevent full-time students in an another state from applying in Montana as a resident if that student already possessed a license in the other state. **REP. REAM** referred to page 8, line 8, which addressed the concerns stated by **REP. WELLS**.

REP. REAM suggested that the language "full-time" be added after the word "enrolled" to limit benefits to full-time students.

Motion **REP. SLITER MOVED TO AMEND HIS PRIOR AMENDMENT TO INCLUDE THE LANGUAGE "FULL TIME" AFTER THE WORD "ENROLLED."**

Discussion:

REP. MARIAN HANSON commented that the amendment would allow a student to hunt during the hunting season if they returned to Montana. **REP. SLITER** said that was true.

REP. TASH spoke about the residency requirements for students. **REP. SLITER** stated that he was not striking language that dealt

with residency requirements, only the age requirement of a student. **REP. TASH** agreed with striking the age requirement. He expressed concern over the student being classified as a resident in both Montana and the state in which they were going to school. **REP. SLITER** stated that would not happen and that language in subsection (4)(d) on page 8 covered that situation.

Vote: REP. SLITER'S AMENDMENT. Motion carried unanimously.

Motion: REP. SLITER MOVED SB 210 BE CONCURRED IN AS AMENDED.

Discussion:

REP. WELLS stated that he once got a ticket from a "mean" game warden and went to court. The judge determined that he should have known better. "Negligently" was not in the law at the time but he still got the ticket. He agreed with **CHAIRMAN WAGNER** about it being unnecessary to add the language. There are times when the discretion of a warden applies. Adding the word "negligently tied the law down tighter than it needed to be."

Substitute Motion: REP. BOB PAVLOVICH MOVED THAT SB 210 BE TABLED. Motion failed 9 to 7 with REPS. WAGNER, REHBEIN, DEVANEY, HANSON, KNOX, PAVLOVICH, and SLITER voting yes.

Discussion:

REP. JIM ELLIOTT stated that a hunter was responsible for knowing where they were and on whose property they were hunting. He asked **Bob Lane, Legal Division, FWP**, if this was correct. **Mr. Lane** said yes. **REP. ELLIOTT** stated that if a hunter was on someone's property but did not know who it belonged to, that hunter was still responsible for their actions. **Mr. Lane** said that hunter was required to have permission to hunt on private property. "Knowingly and purposefully" rules would apply unless there was a dispute about the boundary lines.

REP. ELLIOTT believed that the word "negligently" was referring to these situations. This has happened to him. People have come down off of U.S. Forest Service land onto his property and shot an animal on his property. Even though he did not have a fence up, the hunter was responsible for knowing whose property they were on. Hunters would not be able to defend themselves by saying that they did not know that they were on his property if **REP. ELLIOTT** decided to press charges. The word "negligently" was inserted to cover situations as he described. The hunter was not on his property knowingly. **Mr. Lane** stated that was the reason "negligently" was included, to cover those situations where FWP felt it was a responsibility of the sportsmen to know the hunting season dates, property lines, and bag limits. Including the word "negligent" put the requirement on sportsmen to know the laws and look at the map. Currently, hunters have made their defense in court insisting they did not knowingly or

purposefully commit a crime. FWP's intent was to cover these situations.

REP. WELLS asked **Mr. Lane** if "ignorance of the law was no defense" rule still applied. **Mr. Lane** said FWP was trying to make that statement true. Ignorance of the law should be no excuse. A few years ago there was no mental requirement for fish and game violations. In some counties, the county attorney enforced fish and game violations as strict liability violations. If a person committed the crime, they were guilty. Other counties added the words purposefully, knowingly, or negligently when a person was cited. The statute was unclear. FWP voluntarily added those words a few years ago. FWP believed it was appropriate that the word "negligently" be included to make the statute workable and require that a person know the law.

REP. WELLS asked if **Mr. Lane** thought that the wardens would use less judgment and discretion, be more strict, or would they consider each individual case. **Mr. Lane** said he did not believe it would change how wardens issued citations currently. If a game warden believed a person was guilty, it would allow the game warden to issue a regular citation rather than a courtesy citation. This would make it easier to prove in a court case that the person was guilty.

Motion: REP. PAVLOVICH MOVED THAT THE WORD "NEGLIGENTLY" BE REMOVED FROM THE ENTIRE BILL.

Discussion:

REP. ELLIOTT expressed opposition to the amendment. It was very easy for a hunter to claim, "I didn't know." The word "negligently" needed to be in the bill. It protected landowners.

REP. WELLS stated that originally he was against the word but had changed his mind and agreed with **REP. ELLIOTT.**

REP. PAVLOVICH withdrew his motion.

REP. SLITER stated that ignorance of the law was no excuse. It was the basis for case law in the United States. He believed it was "silly" to have the word "negligently" in the bill.

CHAIRMAN WAGNER asked **Ms. Galda** about negligence cases that were dismissed by the judge, other than a case of someone accidently crossing a person's land. **Ms. Galda** stated that judges were not the problem. They generally agreed that a person should have known the law and "known better." Juries sometimes do not understand this statute. People have been able to convince the jury that they did not knowingly or purposefully commit a crime. The language was meant to deal with this situation.

CHAIRMAN WAGNER directed his question to **Bob Winfield, Game Warden, FWP**, and stated that there were a number of different

instances where this has been a problem. The landowner issue was important and the word "negligently" addressed those concerns. There were other instances including a person who poached a moose and as a defense claimed that they did not know that they needed a license or that the season was not open. FWP lost those cases due to the negligence aspect. The word "negligent" has a fundamental purpose and included the responsibility that people who were using the natural resources be ethical. Part of their responsibility was to read the regulations. Simply because a person did not know and chose not to read regulations should not mean that they were exonerated from the law. He caught a person with 25 fish and who claimed that he did not know the limit. When that person asked about the limit, the game warden said it was in the regulations. The fisherman replied that he did not read the regulations. The defense attorney used it to defend the case. Game wardens were not trying to be picky and they did give a lot of benefit of the doubt. They were trying to protect the resources.

Motion: **CHAIRMAN WAGNER MOVED THAT THE WORD "NEGLIGENT" BE REMOVED FROM THE ENTIRE BILL.**

Discussion:

REP. TASH expressed opposition to the amendment. The bill, with the word "negligent" in it, would aid in enforcement.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: Lost 5 seconds.}

This was a problem with some of the laws. They were difficult to enforce. He believed the word "negligent" should remain in the bill.

CHAIRMAN WAGNER reminded the committee that they had just raised fines up to $1,000 for any "negligent" violation of any fish and game law. Juries have had the opportunity in the past to rule whether negligence was a defense. **REP. WELLS** stated that **CHAIRMAN WAGNER's** comments made it sound like if a person got a ticket, they would pay $1,000 and have no defense. The $1,000 was a maximum and would be appropriate for some of the more serious fish and game violations.

REP. KNOX stated that after hearing the discussion, he had changed his mind to support the word "negligent" being in the bill. He expressed opposition to the motion.

REP. DAN FUCHS stated that in the courts, there had been a lot of difficulty proving intent and negligence when the word "negligent" was not in the law. He was not interested in creating work for trial lawyers.

Vote: **REP. WAGNER'S AMENDMENT. Motion failed 11 to 7 on a roll call vote with REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, PAVLOVICH, and SLITER voting yes.**

Motion: **REP. REAM MOVED THAT SB 210 BE CONCURRED IN AS AMENDED.**

Discussion:

CHAIRMAN WAGNER expressed concern over the definition of "hunt" which was added in the bill on page 6, line 13. He gave the scenario of a dad and son on a four-wheeler and them seeing a grouse. If the son had his shotgun, got off the four-wheeler, and shot the grouse, would he be charged with a misdemeanor fine up to $1,000 for pursuing a bird with motorized vehicle.

REP. SLITER asked about the definition of "pursue." **Mr. Sternberg** addressed the definition concerns. Many sections in the bill used words that needed definitions for clarification and also to establish some consistency. FWP attempted, in the definition section of the bill, to use one word "hunt" to describe "pursue, shoot, wound, kill, chase, lure, possess, or capture." One word would be used rather than five or six words. This was the case with several other words and their definitions.

REP. SLITER asked if a "definition would be needed for a definition." He asked **Mr. Sternberg** to define pursue. **Mr. Sternberg** said it was not a defined term. If a person was arrested for pursuing a game animal out of season, they would be charged with "hunting" out of season. "Hunting" would include "pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing" a game animal or bird.

REP. ROD MARSHALL asked **Mr. Winfield** about the scenario presented by **CHAIRMAN WAGNER** earlier. **Mr. Winfield** said it would not be construed as pursuing with a vehicle. It could possibly be considered driver harassment. **CHAIRMAN WAGNER** asked if this determination would be at the discretion of the warden. **Mr. Winfield** said no because the law did not vary from warden to warden. The warden was allowed the discretion, however, to issue the citation based on the level of determined guilt.

REP. REAM commented if everything else was legal in **CHAIRMAN WAGNER's** scenario, there would not be a problem.

REP. WELLS commented that if the grouse flew off in **CHAIRMAN WAGNER's** scenario and they chased it while riding on the four-wheeler, it may be considered pursuit and harassment.

REP. TASH stated that the game warden would be applying the "knowingly and purposefully" language found at the beginning of the bill in **CHAIRMAN WAGNER's** scenerio.

Substitute Motion/Vote: **REP. FUCHS MADE A SUBSTITUTE MOTION THAT SB 210 BE TABLED. Motion failed 11 to 7 on a roll call vote with REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, PAVLOVICH, and SLITER voting yes.**

Discussion:

REP. DEVANEY asked about the definition of a weapon. **Mr. Sternberg** stated that it was defined to mean, "any instrument, article, or substance that regardless of its primary function is readily capable of being used to produce death or serious bodily injury." **REP. DEVANEY** stated that because a person was carrying a gun, it did not mean that person was doing something illegal.

Motion/Vote: **REP. ELLIOTT MOVED THE PREVIOUS QUESTION. Motion carried unanimously.**

Vote: **BE CONCURRED IN AS AMENDED. Motion carried 11 to 7 on a roll call vote with REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, PAVLOVICH, and SLITER voting no.**

Discussion:

Mr. Sternberg responded to **REP. DEVANEY's** comment by stating that the definition of "hunt" included the possession of a weapon in the field. However, it also did not mean that a person was hunting. The whole definition needed to be considered.

REP. REAM carried the bill on the House floor.

EXECUTIVE ACTION ON SB 303

Motion: **REP. FUCHS MOVED THAT SB 303 BE CONCURRED IN.**

Motion: **REP. SLITER MOVED TO AMEND THE BILL.**

Discussion:

REP. SLITER stated that **SEN. BOB PIPINICH** had an amendment that would strike Section 2. It was **SEN. PIPINICH's** intent for the bill to affect personal watercraft but not all boats.

REP. HANSON asked for clarification. **Mr. Sternberg** said the amendment would strike Section 2 in its entirety and make the subsequent changes in the title.

Vote: **AMENDMENT. Motion carried unanimously.**

Motion/Vote: **REP. DEVANEY MOVED THAT SB 303 BE CONCURRED IN AS AMENDED. Motion carried 16 to 2 with REPS. WAGNER and REHBEIN voting no.**

Discussion:

REP. PAVLOVICH carried the bill on the House floor.

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL DATE March 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority			✓
Rep. Emily Swanson, Vice Chairman, Minority			✓
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard			✓
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar	✓		
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bili Tash	✓		
Rep. Jack Wells	✓		

HOUSE STANDING COMMITTEE REPORT

March 10, 1995

Mr. Speaker: We, the committee on **Fish and Game** report that **Senate Bill 210** (third reading copy -- blue) **be concurred in as amended**.

Signed: Douglas T. Wagner
Doug Wagner, Chair

Carried by: Rep. Ream

And, that such amendments read:

1. Page 1, line 22.
Strike: "$100"
Insert: "$50"

2. Page 7, line 19.
Strike: "subsection"
Insert: "subsections"
Following: "(4)"
Insert: "(b) through (4)(e)"

3. Page 7, line 24.
Following: "section"
Insert: ", except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e)"

4. Page 8, line 21.
Strike: "under 24 years of age"
Following: "enrolled"
Insert: "full-time"

-END-

Committee Vote:
Yes 11, No 7.

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE March 9, 1995 BILL NO. SB 210 NUMBER 1

MOTION: WAGNER AMEND - REMOVE NEGLIGENT

NAME	AYE	NO
Rep. Doug Wagner, Chairman	✓	
Rep. Bill Rehbein, Vice Chairman, Majority	✓	
Rep. Emily Swanson, Vice Chairman, Minority		✓
Rep. Charles Devaney	✓	
Rep. Jim Elliott		✓
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson	✓	
Rep. Hal Harper		✓
Rep. Chase Hibbard		✓
Rep. Dick Knox		✓
Rep. Rod Marshall		✓
Rep. Brad Molnar		✓
Rep. Bob Pavlovich	✓	
Rep. Bob Raney		✓
Rep. Bob Ream		✓
Rep. Paul Sliter	✓	
Rep. Bill Tash		✓
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE MARCH 9, 1995 BILL NO. SB 210 NUMBER 2

MOTION: TABLE

NAME	AYE	NO
Rep. Doug Wagner, Chairman	✓	
Rep. Bill Rehbein, Vice Chairman, Majority	✓	
Rep. Emily Swanson, Vice Chairman, Minority		✓
Rep. Charles Devaney	✓	
Rep. Jim Elliott		✓
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson	✓	
Rep. Hal Harper		✓
Rep. Chase Hibbard		✓
Rep. Dick Knox		✓
Rep. Rod Marshall		✓
Rep. Brad Molnar		✓
Rep. Bob Pavlovich	✓	
Rep. Bob Raney		✓
Rep. Bob Ream		✓
Rep. Paul Sliter	✓	
Rep. Bill Tash		✓
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE MARCH 9 1995 BILL NO. SB210 NUMBER 3

MOTION: DO CONCUR AS AMENDED

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney		✓
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar	✓	
Rep. Bob Pavlovich		✓
Rep. Bob Raney	✓	
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	✓
Rep. Jack Wells	✓	

3/9/95

I hereby give my proxy to Dick Knox to vote on any and all matters to come before the House Fish & Game Committee on 3/9/95

Don Hibbard

Yes on SB 210
as amended

Yes on SB-303
as amended

Pavlovich

Doug Wagner

You have my proxy

3-9-95 Vote me with you
the chairman

NO on SB 210

Bill Rehbein Jr

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 210
Representative Ream

March 24, 1995 2:18 pm

Mr. Chairman: I move to amend **Senate Bill 210** (third reading copy -- blue).

Signed: Bob Ream
Representative Ream

And, that such amendments to Senate Bill 210 read as follows:

1. Page 5, line 28.
Strike: "unscented"
Following: "forms"
Strike: "or"
Insert: ";"

2. Page 5, line 29.
Following: "odor"
Insert: "; or types of scents that are approved by the commission for attracting game animals or game birds"

-END-

ADOPT 95-1

REJECT

(1)

SB 210

HOUSE

681418CW.Hbk

1 of 2

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 210
Representative Ream

March 24, 1995 2:20 pm

Mr. Chairman: I move to amend **Senate Bill 210** (third reading copy -- blue).

Signed: Bob Ream
Representative Ream

And, that such amendments to Senate Bill 210 read as follows:

1. Page 6, line 15.
Strike: "pursuing,"
Following: "killing,"
Strike: "chasing, luring,"

-END-

ADOPT 89-7

REJECT

(2)

SB 210

HOUSE

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 210
Representative Rehbein

March 24, 1995 3:43 pm

Mr. Chairman: I move to amend **Senate Bill 210** (third reading copy -- blue).

Signed: William Rehbein Jr
Representative Rehbein

And, that such amendments to Senate Bill 210 read as follows:

1. Title, line 9.
Following: "PARTS;"
Insert: "PROVIDING THAT ONE-HALF OF THE MONEY FROM CERTAIN FINES RELATING TO VIOLATIONS OF STATE FISH AND GAME LAWS BE DEPOSITED IN THE STATE GENERAL FUND;"

2. Title, line 10.
Following: "87-1-503,"
Insert: "87-1-601,"

3. Page 5, line 19.
Following: line 18
Insert: "**Section 4.** Section 87-1-601, MCA, is amended to read:
"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.
(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.
(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

ADOPT 55-43

REJECT

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HOUSE

(i) the general license account;
(ii) the license drawing account;
(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and
(iv) money received from the sale of any other hunting and fishing license.

(2) That money must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in ~~subsection~~ subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted

under 77-1-804 must be deposited as follows:
(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and
(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of state lands in the management of state lands.
(8) After [the effective date of this act], the state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."""
Renumber: subsequent sections

4. Page 11, line 23.
Following: line 22
Strike: "10(2)"
Insert: "11(2)"

5. Page 25, lines 11 and 13.
Strike: "5" in both places
Insert: "6
Strike: "10" in both places
Insert: "11"

-END-

SENATE BILL NO. 210

INTRODUCED BY BISHOP, REAM

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS; REVISING DEFINITIONS; REVISING PENALTIES; ALLOWING FORMER GAME WARDENS TO BE APPOINTED AS EX OFFICIO WARDENS; CREATING THE OFFENSE OF UNLAWFUL POSSESSION OF A HUNTING LICENSE OR PERMIT OF ANOTHER; CREATING THE FELONY OFFENSE OF SALE OF WILDLIFE OR WILDLIFE PARTS; PROVIDING THAT ONE-HALF OF THE MONEY FROM CERTAIN FINES RELATING TO VIOLATIONS OF STATE FISH AND GAME LAWS BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTIONS 87-1-102, 87-1-111, 87-1-503, 87-1-601, 87-2-101, 87-2-102, 87-2-103, 87-2-106, 87-2-109, 87-2-110, 87-2-401, 87-2-402, 87-2-403, 87-2-404, 87-2-411, 87-2-501, 87-2-504, 87-2-507, 87-2-508, 87-2-509, 87-2-708, 87-2-803, 87-2-807, 87-3-101, 87-3-104, 87-3-107, 87-3-109, 87-3-118, 87-3-301, 87-3-305, 87-3-402, 87-3-501, 87-5-404, AND 87-5-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-1-102, MCA, is amended to read:

"**87-1-102. Penalties.** (1) A person who purposely ~~or~~, knowingly, or negligently violates any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined not less than ~~$50~~ ~~$100~~ $50 or more than ~~$500~~ $1,000, imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, ~~shall~~ may be subject to forfeiture of ~~his~~ that person's license and the privilege to hunt, fish, or trap ~~within~~ in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period ~~of not less than 24 months from the date of conviction or forfeiture~~ set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department

within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting~~, or wasting of~~ a bighorn sheep, moose, wild ~~bison~~ buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined not less than $500 or more than ~~$1,000~~ $2,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion~~, or black bear~~ or any part of these animals ~~or wasting a deer, antelope, or elk~~ shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap~~, take, shoot,~~ or ~~kill~~ hunt a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) ~~A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.~~

~~(e)~~ A person convicted of purposely ~~or~~, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than ~~$50~~ $100 or more than $1,000, ~~or~~

imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for ~~not less than~~ 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

~~(f)~~(e) A person convicted of hunting, fishing, or trapping while ~~his~~ that person's license is forfeited or ~~his~~ privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than ~~$1,000~~ $2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined not less than $500 or more than ~~$1,000~~ $2,000, ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under ~~subsection (2)~~ this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined not less than $500 or more than ~~$1,000~~ $2,000, ~~or~~ imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 2. Section 87-1-111, MCA, is amended to read:

"87-1-111. (Temporary) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each ~~such~~ bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) ~~grayling and~~ fur-bearing animals, as defined in 87-2-101~~,~~ and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section. (Terminates June 30, 2003--sec. 2, Ch. 196, L. 1993.)

87-1-111. (Effective July 1, 2003) Restitution for illegal killing or possession of certain wildlife. (1) In addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing, taking, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, mountain goat, caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, ~~black bear,~~ lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, river-dwelling grayling, and white sturgeon, $300;

(e) paddlefish~~, grayling,~~ and fur-bearing animals, as defined in 87-2-101~~,~~ and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 3. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies, constables, all peace officers of the state or any subdivision of the state, all state forest officers, and, as authorized by cooperative agreement, ~~all~~ officers of the United States forest service, agents of the United States fish and wildlife service, peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state, former fish and game wardens, and field personnel of the department, as the director may appoint, are ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in chapters 1 and 2 of Title 23, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws."

SECTION 4. SECTION 87-1-601, MCA, IS AMENDED TO READ:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) That money must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in ~~subsection~~ subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of state lands in the management of state lands.

(8) After [the effective date of this act], the state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 5. Section 87-2-101, MCA, is amended to read:

"**87-2-101. Definitions.** As used in this chapter, ~~and~~ chapter 3, and 87-1-102, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means ~~the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control~~ to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds. The term does not include ~~unscented~~ decoys, silhouettes, or other replicas of wildlife body forms ~~or~~; scents used only to mask human odor; OR TYPES OF SCENTS THAT ARE APPROVED BY THE COMMISSION FOR ATTRACTING GAME ANIMALS OR GAME BIRDS.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

~~(3)~~(4) "Commission" means the state fish, wildlife, and parks commission.

~~(4)~~(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(5)~~(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(6)~~(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus

micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species *ictalurus punctatus* (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of ~~pursuing,~~ shooting, wounding, killing, ~~chasing, luring,~~ possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(7)~~(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves ~~shall be~~ is restricted to the open season on upland game birds as defined in subsection ~~(12)~~(15) ~~below~~.

~~(8)~~(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(9)~~(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(10)~~(12) "Person" means individuals, associations, partnerships, and corporations.

~~(11)~~(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(12)~~(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(13)~~(16) "Wild buffalo" means buffalo or bison ~~which~~ that have not been reduced to captivity."

NEW SECTION. **Section 6. Lawful means of angling or fishing.** The only lawful means of angling or fishing is by hook and single line or single rod, in hand or within immediate control. All other methods of angling or fishing, unless authorized by commission rule, are unlawful.

Section 7. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection ~~(2)~~(4) at the time the member entered the armed forces and continues to meet residency criteria of ~~subsection~~ SUBSECTIONS ~~(2)~~(4) (B) THROUGH (4)(E); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and a certificate of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, EXCEPT THAT A REASSIGNED MEMBER CONTINUES TO QUALIFY AS A RESIDENT IF THE MEMBER'S SPOUSE AND DEPENDENTS CONTINUE TO PHYSICALLY RESIDE IN MONTANA AND THE MEMBER CONTINUES TO MEET THE RESIDENCY CRITERIA OF SUBSECTIONS (4)(B) THROUGH (4)(E). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) ~~A person who has been a resident of the state of Montana for a period of 6 months immediately prior to making application for a license is eligible to receive a resident hunting, fishing, or trapping license. A person is considered a resident if the person meets the following criteria:~~

~~(a)~~ A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately prior to making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for

purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana ~~the person lives in Montana or has a fixed intent to return to this state when the person leaves it~~;

(b) the person files Montana state income tax returns as a resident if required to file ~~as a resident~~;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not ~~use~~ possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country ~~during the time the resident Montana license is valid~~; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student ~~under 24 years of age~~ who is enrolled FULL-TIME in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

~~(3)~~(6) ~~Any~~ An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

~~(4)~~(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection ~~(4)~~ (7).

~~(5)~~(8) An unmarried minor is considered a resident for the purposes of this section if the minor's

parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

Section 8. Section 87-2-103, MCA, is amended to read:

"**87-2-103. License required.** (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, any game bird, or any fur-bearing animal or ~~take, kill, trap, or~~ to fish for any fish within this state or ~~have, keep, or~~ possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts ~~thereof~~ of those animals or birds, except as ~~herein~~ provided by law or as provided by the department; or

(b) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ to fish for any fish, except at the places and during the periods and in the manner ~~herein~~ defined by law or as defined by the department; or

(c) ~~pursue,~~ hunt~~,~~ or trap~~, take, shoot, or kill~~ or attempt to hunt or trap~~, take, shoot, or kill~~ any game animal, game bird, or fur-bearing animal or ~~take, kill, trap, or~~ fish for any fish within this state or ~~have, keep,~~ possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts ~~thereof~~ of fur-bearing animals without first having obtained a proper license or permit from the department to do so; or

(d) trap or ~~snare or~~ attempt to trap ~~or snare~~ predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled

hunter, as authorized under 87-2-803(4), to be licensed in order to ~~pursue, hunt, take, shoot, or~~ kill or attempt to ~~pursue, hunt, take, shoot, or~~ kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence."

Section 9. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license -- penalties for violation -- forfeiture of privileges.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state the applicant's name, age, occupation, ~~place of~~ address of permanent residence, and post-office address, the applicant's qualifying length of time as a resident in the state of Montana, whether a citizen of the United States or an alien, and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102~~(4)~~(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102~~(4)~~(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for ~~his~~ the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially

false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this ~~statute~~ subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section."

Section 10. Section 87-2-109, MCA, is amended to read:

"**87-2-109. Carrying and exhibiting license and identification.** (1) ~~It~~ Except as provided in [section ~~10(2)~~ 11(2)], it is unlawful for a person to whom a license or permit has been issued to fish ~~for or take any fish or pursue~~, to hunt~~, shoot, kill, or take~~ for any game bird or game animal, or to attempt to ~~trap, trap, or take~~ hunt for any fur-bearing animal in this state unless the person ~~has~~ is carrying the required license, licenses, or permit ~~in the person's possession~~ at the time.

(2) It is unlawful to refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it."

NEW SECTION. **Section 11. Unlawful possession of hunting license or permit of another -- penalties.** (1) Except as provided in subsection (2), it is unlawful for a person to carry or have physical control over a valid AND UNUSED hunting license or permit issued to another person while in any location that the species to be hunted may inhabit.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses THAT ARE issued to another person or persons AND THAT ARE USED OR INTENDED TO BE USED ON GAME ANIMALS NOT TAKEN BY THE PERSON OR PERSONS TO WHOM THE LICENSES WERE ISSUED, is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction.

Section 12. Section 87-2-110, MCA, is amended to read:

"**87-2-110. Alteration, attachment, or transfer of license.** ~~No~~ A person may not at any time alter or change in any material manner or loan or transfer any license to another person. ~~any license, nor may any~~ A person other than the person to whom ~~it~~ a license is issued may not use ~~it~~ the license. A person may not attach the person's license to a game animal killed by another person."

Section 13. Section 87-2-401, MCA, is amended to read:

"**87-2-401. Class A-1--resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of $6, receive a Class A-1 license ~~which~~ that will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 14. Section 87-2-402, MCA, is amended to read:

"**87-2-402. Class B-1--nonresident upland game bird license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon

payment of a fee of $55 may receive a Class B-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ upland game birds, cranes, rails, snipes, and mourning doves and possess the carcasses of upland game birds, cranes, rails, snipes, and mourning doves as authorized by department rules."

Section 15. Section 87-2-403, MCA, is amended to read:

"**87-2-403. (Temporary) Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ entitles the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ of the turkey, during ~~such~~ times and ~~such~~ places ~~as~~ that the ~~department~~ commission ~~shall authorize~~ authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $4 beginning March 1, 1992, and $5 beginning March 1, 1994, for residents and $13 for nonresidents. Turkey tags ~~shall~~ must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of ~~his~~ that person's wildlife conservation license. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag ~~shall entitle~~ entitles the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ one wild turkey and possess the carcass ~~thereof~~ of the turkey, during ~~such~~ times and ~~such~~ places ~~as~~ that the ~~department~~ commission ~~shall authorize~~ authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag ~~shall be~~ is $5. Turkey tags ~~shall~~ must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of ~~his~~ that person's wildlife conservation license."

Section 16. Section 87-2-404, MCA, is amended to read:

"87-2-404. **Three-day nonresident captive-reared bird hunting stamp.** A person who is 12 years of age or older and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license."

Section 17. Section 87-2-411, MCA, is amended to read:

"**87-2-411. Stamp required to hunt waterfowl.** (1) It is unlawful for any person 15 years of age or older to ~~pursue,~~ hunt~~, shoot, or kill~~ waterfowl without first having obtained a valid waterfowl stamp from the department. The fee for ~~such~~ the stamp is $5.

(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans."

Section 18. Section 87-2-501, MCA, is amended to read:

"**87-2-501. Class A-3, A-4, A-5, A-6, A-7--resident deer, elk, and bear licenses -- special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only~~,~~ and who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost ~~which~~ that will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, ~~$11 beginning March 1, 1992, and~~ $13 ~~beginning March 1, 1994~~;

(b) Class A-4, deer B tag, ~~$7 beginning March 1, 1992, and~~ $8 ~~beginning March 1, 1994~~;

(c) Class A-5, elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~;

(d) Class A-6, black or brown bear tag, ~~$11 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~;

(e) Class A-7, antlerless elk tag, ~~$13 beginning March 1, 1992, and~~ $16 ~~beginning March 1, 1994~~.

(2) (a) The holder of a Class A-7 antlerless elk license is entitled to ~~take~~ hunt antlerless elk in areas designated by the commission and at ~~such~~ the times and upon ~~such~~ the terms ~~as~~ set forth by the

commission.

(b) ~~No~~ A person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section ~~shall~~ must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 19. Section 87-2-504, MCA, is amended to read:

"87-2-504. (Temporary) Class B-7 and B-8--nonresident deer licenses. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $150; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion ~~thereof~~ of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700

must be used as provided in 87-1-242(1). (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8--nonresident deer licenses. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle the holder to ~~pursue,~~ hunt~~, shoot, and kill~~ the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion ~~thereof~~ of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state."

Section 20. Section 87-2-507, MCA, is amended to read:

"**87-2-507. (Temporary) Class D-1--nonresident mountain lion license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $320 may receive a Class D-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993.)

87-2-507. (Effective March 1, 2006) Class D-1--nonresident mountain lion license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of $300 may receive a Class D-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy."

Section 21. Section 87-2-508, MCA, is amended to read:

"**87-2-508. Class D-2--resident mountain lion license.** Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of ~~$13 beginning March 1, 1992, and~~ $15 ~~beginning March 1, 1994~~, may receive a Class D-2 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ mountain lion and possess the carcass ~~thereof~~ of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, ~~he~~ the licensee ~~must~~ shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport ~~such~~ the trophy."

Section 22. Section 87-2-509, MCA, is amended to read:

"**87-2-509. Tagging of carcasses of game animals.** (1) Each license issued by the department authorizing the holder of the license to ~~pursue, shoot, kill, capture, take, or possess~~ hunt game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When any person ~~takes or~~ kills any game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed ~~or taken~~ and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed~~, and when~~. When a game animal has been lawfully killed and the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who ~~tagged~~ lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) It is unlawful for a person who kills any game animal by authority of any license issued for the killing of the game animal to fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the carcass of the game animal or portion of the game animal. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by the person. It is unlawful for a person to tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed."

Section 23. Section 87-2-708, MCA, is amended to read:

"**87-2-708. Class A-2--special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $8, a Class A-2 license ~~which shall authorize~~ that authorizes the holder ~~thereof~~ to ~~pursue,~~ hunt~~, shoot, and kill~~ with bow and arrow the game animals ~~so~~ authorized by the licenses held and to possess the carcass ~~thereof~~ of the game animals during seasons and in areas~~, as~~ designated by the department."

Section 24. Section 87-2-803, MCA, is amended to read:

"**87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years ~~old~~ of age or older and who is under 62 years of age.

(3) A resident or nonresident disabled person who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A disabled person issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is permanently physically handicapped and nonambulatory or that the person's mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or ~~may hunt by shooting a firearm from within a self-propelled or drawn vehicle~~ that is parked in an area, not a public highway, where hunting is permitted. Nothing in this subsection allows a disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the disabled hunter by

~~pursuing,~~ hunting~~, taking, shooting, or killing~~ a game animal that has been wounded by the disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish ~~with hook and line or rod,~~ as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

Section 25. Section 87-2-807, MCA, is amended to read:

"**87-2-807. Taking migratory game birds for propagation -- avicultural permit.** (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101~~(7)~~(9), for the purpose of propagation. Before issuing an avicultural permit, the department ~~must~~ shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates ~~such~~ the migratory game birds, and the owner may sell or transfer ~~such~~ the birds as private property, subject to any applicable

state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing ~~such~~ the permit.

(5) The department shall adopt rules implementing this section."

Section 26. Section 87-3-101, MCA, is amended to read:

"**87-3-101. General restrictions.** Except as provided in 87-2-803(4), it is unlawful for anyone to ~~take, capture, shoot, kill, or attempt to take, capture, shoot, or kill~~ hunt or attempt to hunt any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-202, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight, spotlight or other artificial light, trap, snare (except as allowed in ~~87-3-107(1)~~ 87-3-127 AND 87-3-128), ~~or~~ salt lick, or bait~~; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set~~."

Section 27. Section 87-3-104, MCA, is amended to read:

"**87-3-104. Unlawful to hunt or fish during closed season.** It is unlawful and a misdemeanor for any person during the closed season on any species of game animal, game bird, or fish to attempt to ~~take, shoot, kill, or capture~~ hunt or to ~~take,~~ hunt~~, shoot, kill, or capture~~ any ~~such~~ game animal or ~~such~~ game bird or to fish for or catch any fish."

SECTION 28. SECTION 87-3-107, MCA, IS AMENDED TO READ:

"**87-3-107. Use of snare lawful under certain conditions.** (1) It ~~shall be~~ is lawful to use a snare trap for the purpose of snaring ~~any animal or bird~~ a fur-bearing animal, a predatory animal, or a nongame species under the following conditions:

(a) ~~Each~~ A snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps ~~shall~~ must be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section."

Section 29. Section 87-3-109, MCA, is amended to read:

"**87-3-109. Attempting to take simulated wildlife decoy -- penalty.** (1) It is unlawful for a person to discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting ~~or taking~~ of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) Upon conviction, the penalty for attempting to ~~take~~ hunt a simulated wildlife decoy is the same as prescribed for ~~unlawful taking~~ the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated.

(3) In addition to any other penalty, a person convicted under this section shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys."

Section 30. Section 87-3-118, MCA, is amended to read:

"**87-3-118. ~~Sale~~ Felony sale or possession of ~~unlawfully taken~~ wildlife -- penalty.** (1) A person commits the offense of sale of unlawfully taken wildlife if ~~he~~ the person purposely or knowingly:

(a) sells, barters, purchases, or exchanges unlawfully taken wildlife for anything of value; or ~~if he~~

(b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value~~, unlawfully taken wildlife~~.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if ~~he~~ the person purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) (a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) sells, barters, purchases, or exchanges wildlife for anything of value;

(ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than $1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total.

(4) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than $1,000.

(5) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction."

Section 31. Section 87-3-301, MCA, is amended to read:

"**87-3-301. Shotgun loads regulated by department.** ~~No~~ A person may not use a shotgun to hunt~~, kill, or shoot~~ deer or elk except with weapon type and loads as specified by the department."

Section 32. Section 87-3-305, MCA, is amended to read:

"**87-3-305. Unlawful to ~~take~~ hunt deer within city or town boundaries.** It is unlawful to ~~shoot, kill, take~~ hunt~~, or cause to be shot, killed, taken, or captured~~ or ~~to~~ attempt to ~~shoot, kill, take, or capture~~ hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state."

Section 33. Section 87-3-402, MCA, is amended to read:

"**87-3-402. Unlawful to violate closed season on certain game birds.** It is unlawful for any person to hunt~~, shoot, kill, capture, possess, or cause to be hunted, killed, or captured~~ or attempt to ~~shoot, kill, or capture~~ hunt any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie

chicken, ruffed grouse, ptarmigan, or wild turkey until ~~such time as~~ the ~~department shall provide~~ commission provides an open season on any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey."

Section 34. Section 87-3-501, MCA, is amended to read:

"**87-3-501. Open and closed season for fur-bearing animals -- exception.** (1) It ~~shall hereafter be~~ is unlawful and a misdemeanor for ~~any~~ a person to ~~shoot,~~ trap~~, kill, or capture or cause to be shot, trapped, killed, or captured or to attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ or hunt or attempt to trap or hunt any fur-bearing animal until ~~such time as~~ the commission ~~shall provide~~ provides an open season on any ~~marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx, or black-footed ferret~~ fur-bearing animal. The furs and hides of ~~such~~ fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as ~~hereinafter~~ provided by law.

(2) When it is shown that muskrats or beaver are doing severe injury upon or are a menace to the structures, canal banks, or other works of an irrigation project or district or stock water pond, any employee or resident landowner on ~~such~~ the project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of ~~such~~ the project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the director a permit ~~so~~ to do so, except that from June 1 to August 31, both dates inclusive, of each year ~~no such~~ a permit ~~shall be~~ is not required."

Section 35. Section 87-5-404, MCA, is amended to read:

"**87-5-404. Flathead Lake bird preserve -- university of Montana biological reserve.** (1) Those ~~certain~~ islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of ~~said~~ the land returned to the general land office by the surveyor general, ~~be and the same~~ are ~~hereby made~~ a perpetual place of refuge for birds of all kinds, ~~the same~~ and those lands are to be called ~~and known as~~ the "Flathead Lake bird

preserve"~~, which said lands shall be specially~~. The lands are reserved for the breeding, propagating, and protection of all species of birds.

(2) It ~~shall be~~ is unlawful for any person to ~~kill, shoot, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird on ~~said~~ the islands or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ hunt any bird within a distance of 400 yards from the shoreline of ~~said~~ the islands.

(3) It ~~shall be~~ is unlawful for any person to ~~kill, shoot, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird or animal on the university of Montana biological reserve located on the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to ~~shoot at, wound, or kill~~ hunt any bird or any animal within 400 yards of ~~said~~ the university of Montana biological reserve or to discharge any firearms on ~~said~~ the reserve or within 400 yards ~~thereof~~ of the reserve."

Section 36. Section 87-5-406, MCA, is amended to read:

"87-5-406. Gates of the Mountains game preserve. (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of ~~said~~ upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to ~~said~~ the beacon, then along the bulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across ~~said~~ the river and lake to the forest service boundary to the wilderness boundary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of beginning, intending ~~hereby~~ to include in ~~said~~ the game preserve all that territory adjacent to the Gates of the Mountains area, ~~shall be~~ is called ~~and known as~~ the Gates of the Mountains game preserve.

(2) It ~~shall be~~ is unlawful for any person to ~~shoot, kill, capture,~~ hunt, as defined in 87-2-101, or destroy or in any way injure any bird or fur-bearing animal in ~~said~~ the area or to interfere with their eggs or nests or to ~~shoot at, wound, or kill~~ hunt any bird or fur-bearing animal within ~~said~~ the preserve. ~~Said~~ The area ~~shall be~~ is closed to all hunting at all times."

NEW SECTION. **Section 37. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 38. Codification instruction.** [Sections ~~5~~ 6 and ~~10~~ 11] are intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [sections ~~5~~ 6 and ~~10~~ 11].

NEW SECTION. **Section 39. Effective date.** [This act] is effective July 1, 1995.

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